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[G-1] In the matter of an inquiry ...into the manufacture, distribution and sale of electrical wire and cable [1952]

# In the Matter of an Inquiry under The Combines Investigation Act into the Manufacture, Distribution and Sale of Electrical Wire and Cable

STATEMENT OF COMMISSION COUNSEL

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In the Matter of an Inquiry
under the Combines Investigation Act into the
Manufacture, Distribution and Sale of Electrical Wire and Cable

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## I. General Statement

1. The purpose of this statement is to review the effect of the documents and other evidence before the Special Commissioner in this investigation in order that notice of the charges of misconduct alleged against the companies named herein may be given to each of them.

2. It is my allegation that the manufacturers of electrical wire and cable (hereinafter deemed to include Automatic Electric (Canada) Limited) named in paragraph 4 hereof have entered into actual or tacit contracts, agreements or arrangements having or designed to have the effect of fixing a common price of or a resale price of or enhancing the price of or preventing or lessening competition in or substantially controlling the production, manufacture, purchase, sale or supply of or otherwise restraining or injuring trade or commerce in electrical wire and cable. The purpose and effect of the said actual or tacit contracts, agreements or arrangements was, generally speaking, to maintain uniform and non-competitive prices and practices and to prevent or lessen competition in the manufacture and distribution of electrical wire and cable. It is my allegation that the companies named in paragraph 4 hereof were parties or privy to or knowingly assisted in the formation or operation of a combine or combines within the meaning of The Combines Investigation Act, by way of the said actual or tacit contracts, agreements or arrangements, particulars of which are given in this statement, which contracts, agreements or arrangements have operated and are likely to operate to the detriment or against the interest of the public by depriving the public of that competition in the production, manufacture, purchase, sale and supply of electrical wire and cable to which it is entitled.

3. Hearings were held in Montreal from May 12th to May 26th, 1952, inclusive, and in Toronto from June 16th to June 26th, 1952, inclusive. Witnesses directly concerned with the manufacture and sale of electrical wire and cable were called from all of the manufacturers charged in this statement, and were examined before the Special Commissioner as to aspects of the electrical wire and cable industry relevant to this inquiry, including the meaning of and circumstances giving rise to many of the documents mentioned in this statement. The witnesses called admitted the existence of certain joint activities among the manufacturers and admitted participation in the meetings referred to and generally did not deny the authenticity of the documents produced at the hearings. Most of the witnesses admitted that the purpose of the joint activities with respect to the various subjects referred to herein was to achieve uniformity in prices and the various factors affecting prices. Suggestions were made by certain of the witnesses that things done by the industry as indicated in the documents or as indicated by the witnesses on

examination had not operated and were not likely to operate to the detriment or against the interest of the public, but were of advantage to the public and the industry by establishing conditions of stability in the industry and resulting in reasonable prices of electrical wire and cable products in Canada. In my opinion such suggestions cannot be supported since I submit that the interference with competition which has taken place in the manner shown by the evidence has resulted in its practical elimination.

4. In my opinion the following companies have participated in the alleged misconduct described in this statement:

The Automatic Electric (Canada) Limited, 284 King Street West, Toronto, Ontario (hereinafter referred to as "Automatic")

The Boston Insulated Wire and Cable Company Limited, 118 Shaw Street, Hamilton, Ontario (hereinafter referred to as "Boston")

Cables, Conduits & Fittings Limited, 77 Richelieu Street, St. Johns, P. Q. (hereinafter referred to as "C.C.& F.")

The Canada Wire and Cable Company Limited, 147 Laird Drive North, Leaside, Ontario (hereinafter referred to as "Canada Wire")

The Canadian General Electric Company, Limited, 212 King Street West, Toronto, Ontario (hereinafter referred to as "C.G.E.")

The Federal Wire and Cable Company Limited, 265 Suffolk Street, Guelph, Ontario (hereinafter referred to as "Federal")

The Industrial Wire and Cable Company Limited, 35 Golden Avenue, Toronto, Ontario (hereinafter referred to as "Industrial")

The Northern Electric Company Limited, 1050 Beaver Hall Hill, Montreal, P. Q. (hereinafter referred to as "Northern")

The Phillips Electrical Works Limited, Kingston Road, Brockville, Ontario (hereinafter referred to as "Phillips")

Triangle Conduit and Cable (Canada) Limited, 4006 Dundas Street West, Toronto, Ontario (hereinafter referred to as "Triangle")

5. The products herein referred to as wire and cable include among others: un-insulated conductors; weatherproof wires, rubber insulated and braided wire; cambric insulated and braided wire; thermoplastic wires and cables; power cables; telephone wire and cables; flexible cords; flexible armoured cable; tape and

wire armoured cable; signal and control cable; non-metallic sheathed cables; magnet wires; asbestos insulated wires and cord assemblies.

6. The manufacturers referred to herein supply all but a small part of the wire and cable used in Canada. In recent years they have been responsible for approximately 90 per cent of the Canadian production. If wires and cables with aluminium and aluminium alloy conductors are excluded from this figure, less than 1 per cent of the wire and cable manufactured in Canada in 1948, 1949 and 1950 was produced by companies other than those listed in paragraph 4 above.

7. Imports of wire and cable into Canada form a relatively small part of the total quantity of wire and cable used in Canada. In recent years such imports have been generally less than 3 per cent of Canadian production. The Canadian manufacturers listed in paragraph 4 above have supplied approximately 85 to 90 per cent of all the wire and cable sold in Canada.[1]

8. The wire and cable industry in Canada has enjoyed customs tariff protection at all relevant times and it is submitted that in a number of instances the manufacturers by agreement have priced their goods in relation to the duty-paid prices of like goods which might be imported, such agreed-upon prices being sufficiently low to prevent import competition from disturbing their domestic arrangements. It is submitted that the duties of customs have, in these instances, facilitated the disadvantage to the public alleged in this statement to have resulted from the activities of the manufacturers.

9. The documents indicated and the oral evidence confirmed that the activities of the manufacturers resulted in the establishment of uniform prices and that the price lists of all manufacturers were identical for similar products.

10. Certain practices engaged in by the manufacturers appeared to be for the purpose of giving the impression that competitive conditions prevailed in the wire and cable industry with respect to prices and other matters whereas the documents and evidence indicated that prices and conditions of sale were fixed by agreement.

11. The agreements or arrangements so entered into from time to time included the following:

(a) Agreements or arrangements fixing common list prices or common resale prices for standard wire and cable products.

(b) Agreements or arrangements establishing uniform list prices and a system of computing prices for power cables, pre-assembled aerial cables, rubber insulated neoprene jacketed cables (R.I.N.J.) and similar wires and cables.

(c) Agreements or arrangements on uniform prices for products not otherwise included in established price lists.

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1. Dominion Bureau of Statistics

(d) Agreements or arrangements prior to 1950 whereby Northern performed the major pricing functions and distributed prices and other related information to the other wire and cable manufacturers which arrangement resulted in the establishment and maintenance of uniform prices and practices.

(e) Agreements or arrangements during and following 1950 whereby various manufacturers undertook, with respect to certain products, to make price studies, to prepare suggested prices and generally to distribute such suggested prices and other information to the other manufacturers for the purpose of establishing uniform prices and practices.

(f) Agreements or arrangements with respect to copper bar base prices and related matters providing for the uniform adjustment from time to time of list prices for wire and cable products commonly referred to as tonnage materials.

(g) Agreements or arrangements on the effective dates of price changes for wire and cable products.

(h) Agreements or arrangements on copper bar and pig lead base prices and changes relating thereto in order to provide for uniform adjustments to list prices for power cables and related wires and cables.

(i) Agreements or arrangements prior to late 1951 on the form and composition of power cable price books which had the effect of camouflaging and disguising the fact that prices were identical.

(j) Agreements or arrangements as to the exchange of information on tenders in order to arrive at agreement and uniformity with respect to the prices to be quoted on particular tenders.

(k) Agreements or arrangements to quote lower than their agreed-upon domestic prices on certain tenders in order to meet and eliminate anticipated competition from wire and cable manufactured in the United Kingdom.

(l) Agreements or arrangements to sell to different classes of customers at different prices and to adopt uniform list prices and uniform rates of discount for each such class.

(m) Agreements or arrangements whereby each manufacturer adopted the same lists of customers in each class and agreed upon names to be added to or deleted from such lists.

(n) Agreements or arrangements on the location and appointment of agents.

(o) Agreements or arrangements on uniform quantity and cash discounts.

(p) Agreements or arrangements on uniform freight charges and methods of charging same and on uniform zones and points for delivered prices.

## II. System of Operation

This section reviews the evidence relating to the system under which the manufacturers operated for the purpose of arriving at the agreements and arrangements alleged herein.

### 1. Meetings of Manufacturers' Representatives

#### (a) Organization and Attendance

The wire and cable manufacturers have not been organized in a formal association, but their representatives have gathered informally from time to time since 1912, at least. These meetings appear to have been for the purpose of disseminating information and of discussing and arriving at agreements or arrangements on matters of common interest to the wire and cable manufacturers.

For a number of years prior to July 1951, notices of meetings originated in most cases with K. P. Macpherson of Northern. If some one wished to have a meeting called, the suggestion was made to K. P. Macpherson who would then notify the other members of the industry. There was apparently no formal arrangement to the effect that Mr. Macpherson should function as co-ordinator, it being merely a procedure that grew up over a period of time (Evidence, pp. 37, 86, 416, 1473, 1648). The meetings have been held at various locations depending apparently upon the convenience of the parties concerned. There has been no pattern or regularity to the times at which meetings were held. Witnesses indicated that the number of meetings per year may have varied from as few as three to as many as eight; the general opinion was that there had been from four to six per year, a meeting being called whenever the necessity for having one arose (Evidence, pp. 38-9, 416, 573, 603, 1648).

The documentary and oral evidence indicates that the dates and places of some of the meetings of manufacturers' representatives, from September 1945 to April 1952, were as follows:

| Date | Place | Evidence |
|---|---|---|
| September 11, 1945 | Montreal | Ex. 273 and 274 |
| November 23, 1945 | Toronto | Ex. 275 |
| January 30, 1946 | Montreal | Ex. 276 |
| March 28, 1946 | - | Ex. 278 |
| July 9, 1947 | Montreal | Ex. 96 and 97 |
| September 27, 1947 | Montebello | Ex. 293; Evidence, pp.1285-7 |
| November 26, 1947 | Toronto | Ex. 98 |
| December 8, 1947 | Toronto | Ex. 19 |
| February 26, 1948 | Toronto | Ex. 99, 2BIW11-8 to 11-9 9212-9213 |
| August 19, 1948 | Montreal | Ex. 99, 2BIW11-11 and 11-12, 9215-9216 |
| December 1 & 2, 1948 | Brockville | Ex. 99, 2BIW11-10, 9214 |
| January 11 & 12, 1949 | Toronto | Ex. 301; Ex. 99, 2BIW11-2-1 to 11-2-2, 9203-9204 |
| March 2, 1949 | Montreal | Ex. 62; Ex. 99, 2BIW12-1 to 12-2, 9219-9220 |

| Date | Place | Evidence |
|---|---|---|
| June 8, 1949 | Toronto | Ex. 193 |
| July 14, 1949 | Caledon Trout Club | Ex. 99, 2BIW14-1, 9227 |
| August 17, 1949 | Montreal | Ex. 303; Ex. 99, 2BIW13-2, 9226 |
| January 24, 1950 | - | Ex. 304; Evidence, pp. 1892-6 |
| April 1950 | - | Ex. 313; Evidence, pp. 1410-1 |
| September 27, 1950 | Toronto | Ex. 99, 2BIW8-2, 9190 |
| June 12 & 13, 1951 | Caledon Trout Club | Ex. 321; Evidence, pp. 1441-4 |
| September 1951 | - | Evidence, p. 424 |
| November 1951 | - | Evidence, p. 424 |
| February 20, 1952 | - | Ex. 401; Ex.121; Evidence, pp.424, 471 |
| April 2, 1952 | - | Ex. 119; Evidence, pp. 417, 424, 465-7, 695, 715 |

The procedure at meetings of manufacturers' representatives has been informal. Until July 1951, when K. P. Macpherson ceased attending the meetings, it was customary for him to perform the function of chairman. After this time there appears to have been no regular chairman, although the evidence indicates that T. A. Gass functioned as such on one or two occasions. There has been no secretary of this informal organization (Evidence, pp. 37, 416-7, 1221, 1371, 1472-3, 1648).

On some occasions an agenda was prepared and circulated prior to the date of the meeting; on others, an agenda was circulated at the meeting and sometimes, apparently, there was no agenda (Evidence, pp. 1220, 1330, 1473, 1878). Exhibit 99 contains several agenda which were identified by F. W. Barnhouse of C. G. E. and L. G. Lumbers of Canada Wire as being "illustrative of the type of agenda sheets which were prepared for" meetings of manufacturers' representatives (Evidence, pp. 1627, 1793). Included on these agenda were such subjects as the following: reels and lags; gross weights - tonnage material; freight rates; distribution - jobbers, agents, specials, chain and department stores; railways; provincial taxes; importations; and discounts (Exhibit 99). When matters of interest to all manufacturers were being discussed all members of the industry appear to have been notified of the proposed meeting. When the meeting was called to discuss matters of interest to only a limited number of manufacturers, only those interested appear to have been notified and the entire group did not meet. For example, when the subject of power cables only was discussed it was usually a meeting of the limited number of manufacturers producing power cable (Evidence, pp. 903, 1325-6, 1793, 1853, 1879).

Formal minutes of the proceedings have not been kept. In some instances an individual manufacturer's representative took notes for his own benefit and these notes were sometimes circulated to other manufacturers (Evidence, pp. 37, 417, 691, 1344, 1371, 1647, 1878).

The meetings were usually attended by one or two representatives from each manufacturer concerned. The evidence

indicates that the various companies were represented over a period of years as indicated below.

Northern: K. P. Macpherson attended regularly from approximately 1932 until July 1951 (from 1932 - 1938 as Assistant Wire & Cable Sales Manager and from 1938 until July 1951 as Sales Manager of the Wire and Cable Division). Mr. Macpherson originally attended with the late C. F. R. Jones, Manager of the Wire and Cable Division from 1938 to 1944, subsequently with C. Woolgar, Sales Superintendent of the Wire and Cable Division from 1946 to March 1, 1949, and finally with M. R. Macdonald, Sales Superintendent of the Wire & Cable Division since March 1, 1949. D. C. Borden, who succeeded K. P. Macpherson as Sales Manager in July 1951, and M. R. Macdonald attended for Northern after July 1951.

Automatic and Phillips: T. W. Brackenreid appears to have attended two meetings in 1936 and 1937 when he was Sales Manager of Phillips. From 1938 to 1944 either P. A. Timmons or J. H. Fitzgerald or both attended. From 1944 to 1946 Mr. Timmons apparently attended alone. For the last few years J. H. Fitzgerald has represented Phillips and T. A. Lindsay has represented Automatic. Mr. Lindsay first attended as General Manager and since November 1951 as Vice-President and General Manager. Mr. Timmons was Sales Manager of Automatic from 1938 to 1944 and Supervisor of the Service Department of Phillips from 1944 to 1946. Mr. Fitzgerald was Supervisor of the Service Department of Phillips from 1939 to 1944 and resumed that position in 1946.

C. C. & F.: V. N. Longtin and W. Northey have represented C. C. & F. for the last twenty years. Mr. Longtin first attended as Vice-President and General Manager and, since April 29, 1947, as President and General Manager. Mr. Northey originally attended as President and, since April 29, 1947, as Chairman of the Board.

Boston: G. W. Arnold, Director and Manager, has attended the meetings since the First World War.

Triangle: W. R. Greenshields attended as Vice-President and General Manager from June 1941 until April 1, 1952, when he retired. J. W. Kerr also attended during most of that period and, since the retirement of Mr. Greenshields, he has represented the company as Vice-President and General Manager.

C. G. E.: C. S. Leary has attended since 1930. Since 1945 F. W. Barnhouse or C. S. Leary or both have been attending. Mr. Leary was Manager of Sales for Wire and Cable Section from 1930 until September 1, 1945, when he was appointed Manager of the Wiring Materials Division. He held this appointment until April 1, 1952, when he became Manager of Sales for Construction Materials Department. F. W. Barnhouse was Manager of the Wire and Cable Section of the Supply Department from 1945 until April 1, 1952, when he was appointed Manager of Product Planning, Wire and Cable, of the Construction Materials Department.

Canada Wire: T. A. Gass attended from 1912 until May 19, 1948, as General Sales Manager and since then as Assistant to the General Manager. W. J. Culliton, General Sales Supervisor from 1937 to April 1, 1949 and Assistant to the General Sales Manager since April 1, 1949, attended a few meetings with Mr. Gass some time ago.

L. G. Lumbers attended some meetings while he was General Manager from May 19, 1948 until December 24, 1951. J. H. Pryce, Supervisor of the General Sales Department since April 1, 1949, has attended since 1948.

Federal: J. Godfrey Smith has attended for many years and T. J. Bell has attended since 1938. Mr. Smith was President and General Manager from 1930 to 1946, when he ceased to hold the position of General Manager. Mr. Bell was Assistant to the President from 1938 to 1946, and was General Manager from 1946 to April 1952, when he became Vice-President and General Manager.

Industrial: Industrial was first invited to send representatives to the meetings of manufacturers' representatives in 1943 or 1944 (Evidence, p. 1985). Since that time A. A. Wagman has represented the company in the capacity of Sales Manager and on a few occasions W. Wagman, President of the Company, has also attended.

(b) Purpose of Meetings

Several of the witnesses were questioned with respect to their understanding of the purpose of the meetings. D. C. Borden was questioned as follows:

"Q. What is the purpose of these meetings?

A. The purpose of people attending the meetings is not necessarily the same for all the people. I don't know the answer to that. I can tell what my purpose is.

Q. Tell us what your purpose was and Mr. Macdonald's purpose, if you know it?

A. The term 'orderly marketing' has been used to describe that, and I really think it is a good term because that is the opposite to 'chaotic marketing', and where we are offering products that are absolutely identical, built to the same C.S.A. specification to customers who want exactly the same amount and to customers who will be buying again and again and again, and have to send business around, as they call it, it calls for similarity in prices. Anything else would be chaos because there would be no system although the products are identical. Let us say the particular group should be sold for $5. Somebody decides to be smart and sells it for $4.95; 5¢ is not going to put them out of business but the next time somebody will say, 'I will sell it for $4.90', and then it goes down too low and comes up again and it can only be described as chaos. My purpose is developing some form of orderly marketing which in the long run may not possibly cost the consumer any more and gives the customer the right to buy, to spread their business around. So I say my object is to achieve orderly marketing.

Q. Does that statement represent to your knowledge the views of your company?

A. Oh, definitely, as far as I can interpret the management's view.

Q. Have you ever discussed the practical purpose of the meetings with your chief, Mr. Eastlake?

A. If I can interpret - I hesitate to say this because I really don't know - I have discussed it with them.

Q. With Mr. Eastlake?

A. Absolutely, certainly.

Q. So to that extent Mr. Eastlake knows your purpose in attending the meetings and presumably approves of it?

A. Yes." (Evidence, pp. 418-9)

G. W. Arnold stated the purpose of the meetings as follows:

"Q. What are some of the other subjects which would merit consideration at one of these meetings?

A. These meetings are mostly for passing information from one company to another; not for making agreements.

Q. What would be the purpose of passing information from one company to the other?

A. So you would know where you stood on your prices. You understand, no doubt, if I put my prices 10% higher than somebody else's prices I will get no orders, and if I put them 10% lower then the next time I would have to go another 10% lower so in our industry institution you would have to know what your competitors are doing.

Q. Would it be correct to say that one of the objects of these meetings is for the manufacturers to get together to exchange information in order to avoid this price cutting?

A. Yes.

Q. That is one of the subjects?

A. Not often to avoid price cutting, just simply to know what your competitors are doing.

Q. I take it that the object would be to achieve uniformity?

A. Yes.

Q. In prices?

A. In list prices, anyway." (Evidence, pp.1223-4)

W. R. Greenshields stated that the idea was to obtain uniformity in price:

"Q. Would it be correct to say that in so far as prices are concerned that one of the objects of these meetings was the exchange of information between manufacturers by memoranda or so as to arrive at uniformity in price?

A. Yes, I would say that was the idea."
(Evidence, p. 1371)

C. S. Leary stated:

"Q. What has been the real purpose in discussing such things as prices or jobber discounts, cash discounts or map freight rates or zone list prices; what is the object of having meetings and discussing those subjects?

A. When we think of wire and cable, we are thinking of a product normally that is made to a specification issued by the Canadian Standards Association. A great deal or great quantity of the product manufactured will be bought for resale, and, thinking there of the contractor buying for wiring a building, he sells his work. He will not pay us one five cent piece more for a piece of wire than he will pay anybody else.

THE COMMISSIONER: Would he pay you less if you asked him a lower price?

A. I think so.

Q. You think he would?

A. I think he would take it up, but he won't pay us any more.

THE COMMISSIONER: No, I agree with that.

A. And I would say that one of the reasons has been an effort to have a somewhat orderly marketing of these products.

MR. HUNTER: Q. First, would it be correct to say that orderly marketing, as you have used the phrase, is one in which there is a uniform price as between the manufacturers of the same product?

A. That would be my interpretation of it.

Q. And that has been then, or has that been an objective of the industry to your knowledge during the period during which you have been associated with it?

A. It has been an objective but it was never accomplished.

Q. But that has been the purpose of having meetings as far as you are concerned -- has that been the purpose?

A. That would be one of them. There are other things that could come up. You at times learn about a new product coming on the market, sometimes you learn about it before it hits the market, and that could work from our Company to someone else or them to us." (Evidence, pp. 1486-7)

J. H. Pryce stated:

"MR. HUNTER: Q. What was the main purpose of holding these meetings of manufacturers?

A. To discuss the general aspect of the wire and cable business as it reflected on both the product and the price to the consumer.

Q. Was the uniformity in price what you were trying to achieve?

A. That is right.

Q. Such things as the jobbers' discount or cash discount or zone list prices or map freight rates all influenced the price at which the product would be sold?

A. That is right.

Q. Was that the purpose of discussing these particular factors at these meetings of manufacturers?

A. Yes." (Evidence, p. 1807)

(c) Subjects Discussed

The following excerpts from the evidence illustrate some of the subjects discussed at meetings of manufacturers' representatives.

Prices:

"Q. Was one of the purposes of those meetings to exchange information between manufacturers on such things as prices?

A. Prices were discussed at some of them."
(K.P.Macpherson - Evidence,p.30)

"Q. I take it from that that one of the subjects that receives prime consideration at the meetings of the manufacturers is prices?

A. Correct.

Q. Are those meetings, or have they been used while you have been there as a medium of exchange of price information?

A. Yes." (M.R.Macdonald - Evidence,pp.574-5)

Zone List Prices and Map Freight Rates:

"Q. When you were sales manager or assistant sales manager and attended these meetings to which you referred, do you remember any occasion on which map freight rates or zone prices were discussed?

A. Yes." (K.P.Macpherson - Evidence,p.34)

"Q. Have you ever been present at any meetings of manufacturers when changes in zone list prices were discussed?

A. Yes.

Q. As a result of the discussion or any arrangement which may have been made were changes subsequently made in the zone list prices?

A. Yes.

Q. Have you ever been present at any meeting when the subject of map freight rates was discussed, which I understand, is somewhat equivalent to zone list prices except it is a straight freight adder?

A. Yes." (L.G.Lumbers - Evidence,p.1759)

Foreign Competition:

"Q. What are some of those matters which you called a matter of policy that should be discussed between the manufacturers?

A. There are not very many things discussed. It might be import prices.

Q. Would that be import prices from the United States and England?

A. Yes.

Q. Prices from English competition or American competition?

A. Yes.

Q. What would be the nature of the discussion on a subject such as that?

A. I would say whether their prices should be met or should not be met.

Q. Has that actually been a subject of discussion to your knowledge at one of these meetings.

A. Yes." (G.W.Arnold - Evidence,p.1222)

"Q. And what is discussed at those meetings at which you have been present?

A. A lot of factors which have some bearing on how business should be conducted for standards, sometimes prices, sometimes Government regulations, sometimes shortage of raw material.

. . .

Q. And the effect of American competition?

A. At times.

Q. And the effect of English competition?

A. At times it has been discussed.

Q. At meetings at which you have been present?

A. Yes." (F.W.Barnhouse - Evidence, pp.1543-5)

Appointment of Agents and Jobbers or Wholesalers:

"Q. Was one of the subjects which was discussed at meetings of manufacturers the appointment of wholesalers or jobbers?

A. It was.

Q. And the appointment of agents, was that also discussed?

A. It was." (T.A.Gass - Evidence, p.1648)

"Q. About appointment of wholesalers or jobbers; was that a subject which is discussed?

A. It has been discussed.

Q. And the appointment of agents, is that discussed?

A. I have heard discussions on agents."
(F.W.Barnhouse - Evidence, p. 1544)

Cash Discounts:

"Q. What about the question of cash discount, has that been discussed at these meetings?

A. Yes, it has." (J.H.Fitzgerald - Evidence, p.607)

"Q. Was the subject of cash discounts discussed at the meetings?

A. On occasions, yes.

Q. I suppose when there has been discussions about changing cash discounts then it would be taken up at these meetings?

A. Yes.

Q. Would it be correct to say that the purpose of discussing cash discounts at the meeting would be the same as jobber discounts, that is, that if you did not have the same discount or make a change in the discount at the same time and to the same extent it would disturb this uniformity which had been achieved?

A. That is correct." (W.R.Greenshields - Evidence, pp.1375-6)

Jobber Discounts:

"Q. What about jobbers' discounts or wholesalers' discounts; is that a subject that has been discussed at these meetings?

A. Yes." (M.R.Macdonald - Evidence,p.575)

"Q. Are there any other subjects that are discussed at these meetings; what about the jobber or wholesaler discount; is that a subject that receives consideration at these meetings?

A. Yes." (G.W.Arnold - Evidence,p.1229)

Standardization:

"Q. Was one of the purposes of those meetings to exchange information between manufacturers on such things as prices?

A. Prices were discussed at some of them.

Q. And, I take it, standardization of product?

A. Standardization is pretty well in the hands of C.E.M.A. and the Canadian Standards Association.

Q. I think you said in the early days before C.E.M.A. was established you used to have those meetings?

A. Yes.

Q. Would it be correct then to say at that time that such things as standardization of product was discussed at these meetings of manufacturers' representatives?

A. Standardization of product and improvement of product and that sort of thing has been discussed and there have been other meetings that have had solely to do with the work for the federal government, in my time."
(K.P. Macpherson - Evidence, p. 30)

"Q. What were some of the subjects discussed at meetings?

A. Standardization of all products, our methods of distribution, our methods of packaging."
(T.J.Bell - Evidence,p.1870)

2. Circulating Memoranda

Since 1912 information on list prices, tender quotations, jobber appointments, discounts, freight rates and other matters which came up from time to time, has been exchanged among the wire and cable manufacturers by means of memoranda (Evidence, pp. 1656-7). The purpose of exchanging such information by memoranda appears to have been to arrive at and implement agreements and arrangements among the manufacturers in order to achieve uniformity in prices and conditions of sale. The form taken by these memoranda was in accordance with the system which is described below.

One person in each company nominally represented his company for the purpose of receiving and sending out memoranda. This person has been one of those representing the company at meetings of manufacturers' representatives. Generally, from 1930 to the present, the sender of a memorandum signed it with only the first letter of his surname. Occasionally, this was done for him

by some member of his staff (Evidence, pp.172-7; 630-1). An identical or carbon copy of the memorandum was prepared for each interested party to whom it was to go. The recipients of each memorandum were usually indicated in the lower left-hand portion of each copy sent out, by means of the initial letter of their surnames. On occasions from 1930 to 1940, the initials of both the Christian name and surname were used to indicate the recipients and on some occasions the memorandum was signed with more than one initial. Very rarely, the full name of each party was placed on the memorandum (Evidence, pp. 55-8). During the course of the hearings, memoranda of the type described above were referred to as "circulating memoranda".

The circulating memoranda were sent out usually on plain paper on which there was no letterhead; generally, the only reference to the sending company was the initialled signature and, as stated below, occasionally this was omitted. The memoranda were mailed in plain envelopes addressed to the representative of the recipient company in care of the company and were usually marked personal. Some of such envelopes to be used for such memoranda were filed as Exhibits 147 and 25.

Many of the memoranda of very recent origin bore no signature and the recipients of copies of them were not indicated on the documents themselves. Several of these were filed as exhibits and were identified by witnesses as being examples of the exchange of information between manufacturers by memoranda (Exhibits 341, 357, 386). The subject matter of such memoranda was, on many occasions, the price that one of the manufacturers proposed to quote on a tender. D. C. Borden was questioned as follows with respect to the circulation of these memoranda and the means of identifying the sender:

"Q. How is that information passed, is it passed in the form of a telephone call or is it a letter or a memorandum?

A. It is a piece of paper containing the information we propose to quote, and then gives details.

Q. Are copies sent to all concerned?

A. Yes.

Q. You say it is a piece of paper and it is in the form of a memorandum. Do you sign it, or does Northern Electric sign it?

A. No.

Q. How do your competitors know it emanates from Northern Electric?

A. Quite frankly, I see some of these I do not know who they emanate from. It is a combination of a sort of typing on it. This thing has been going so long that when I pick up one of these now I can generally tell who it is from. If I can't, other people who handle them always can. Sometimes I wonder how they do know who it is from. There are no initials on it. At any rate, as you know, you

can tell typewriters and there has never been any difficulty. As a matter of fact, I remember now the simplest check is the envelope it comes in."
(Evidence, pp.433-4)

In certain cases memoranda were sent out unsigned, but the recipients of the memoranda were indicated. In such cases the senders of the memoranda could usually be determined by means of a process of elimination (Exhibit 336; Evidence, pp. 1571-2).

Except through "mistake" it would appear that all persons indicated on the list of recipients shown in the memoranda received their copies. Mr. Macpherson testified on this aspect of the circulating memoranda system as follows:

"Q. The memos which originated in other companies and which were circulated around under this system,in some cases, I gather from the documents that you identified yesterday, would only go to certain other manufacturers. It might not go to all the wire and cable manufacturers. Is that correct?

A. That is correct.

Q. But if there was a letter 'M' on the list indicating the recipients, did that always indicate that Northern Electric received a copy of that memo?

A. I would think so.

Q. To your knowledge did you receive a copy?

A. Other than by mistake". (Evidence, p.73)

Exhibit 24, which was an unsigned and undated document found in the files of Northern, was identified as instructions left by one of K.P. Macpherson's stenographers for another stenographer who was to take her place (Evidence, pp. 79,170). The instructions were concerned with the method of handling correspondence between Northern and Northern's competitors and outlined the procedure to be followed with outgoing and incoming correspondence of that nature. An excerpt from this exhibit, showing in brackets ink or pencil insertions which appear on the original typed document and indicating words which have been struck out by pen or pencil on the original document by means of a line drawn through them, is as follows:

"INSTRUCTIONS - DEPARTMENT 406

. . .

Sheets First thing each morning, you copy in red book those sheets that were sent out the night before, then ~~file them in red folder~~. (destroy)

The sheets from competitors come in in plain white envelopes marked 'Personal.' You open these, with the rest of the mail, stamp date on the back and pass them along to Mr. ~~Woolgar~~ (Macdonald). Information on prices goes first to Mr. Macpherson, then to Mr.

Clish. These circulate outside, are typed on cards by girls outside, then are placed in box marked 'Sheets'. You then file them in red folder.

Each night the sheets we send out are given you by the girls and Engineers outside. These are signed M, placed in plain white envelopes, marked 'Personal' and sent out by you. The addresses to which you send them will be found facing you pasted on desk or on card in drawer behind you - for instance

G sheets go to T. A. Gass
F " " " J. H. Fitzgerald
~~B " " " F. W. Barnhouse~~
(B " " " F. W. Barnhouse)

There are ~~nearly~~ always these ~~three~~ (three), sometimes more. Have envelopes ready each night. IMPORTANT - Be sure these go out in mail each night. Be sure they are not left lying in mailing basket.

Sometimes Mr. Macpherson has mail for these people himself - like notices of meetings, etc. These go in the same envelopes.

. . ." (Exhibit 24, 3 NE 21-1,4710)

K. P. Macpherson said that he had never seen the above document, but admitted that the document correctly set out the procedure that was followed with respect to "circulating memoranda which were either sent out by . . . or received by Northern Electric from other manufacturers" (Evidence, pp. 78-80).

Mrs. J. Kent, K. P. Macpherson's secretary prior to July 1951 and D. C. Borden's secretary since that date, was also questioned as to the meaning of Exhibit 24 and explained the difference between "F", "B" and "G" sheets and the other mail which Mr. Macpherson might have for the wire and cable manufacturers:

"Q. If you would look at Exhibit 24, in the fourth paragraph reference is made to 'G' sheets and then 'F' sheets and 'B' sheets. What are those 'G' sheets, 'F' sheets and 'B' sheets?

A. Sheets that were sent out to 'G', 'F' and 'B'.

Q. Would those be price sheets; that is, advices of price changes or revision in price?

A. Yes.

Q. Perhaps I had better draw your attention to, I think it is the sixth paragraph where it says:

> 'Sometimes Mr. Macpherson has mail for these people himself, like notices of meetings, etc.'

Do you see where that appears?

A. Yes.

Q. The type of information which Mr. Macpherson might send out, such as a notice of a meeting, would not be classed as a 'B' sheet or a 'G' sheet; is that correct?

A. That is correct.

Q. A 'G' sheet would be something different from a notice of meeting?

A. Yes.

Q. Am I correct it would be price information or price changes or price lists? Is that what is meant?

A. Yes." (Evidence, pp. 170-1)

D. C. Borden was examined with respect to Exhibit 24 and indicated that generally the same procedure was followed after he took over from Mr. Macpherson. He also stated that the letter "M" was still being used as the letter of designation for Northern, even though Mr. Macpherson was no longer with the head office (Evidence, pp. 435-6).

Exhibit 142 comprises some work sheets found in the files of Northern which indicate the practice followed or the mechanics used by Northern when preparing price information to send to other wire and cable manufacturers. The words "50 With, 20 Without" were written on two of the price sheets. When S. H. R. Clish of Northern was questioned about these price sheets, he said that the notation indicated that fifty sheets, bearing Northern's Master Book Identification, were to be prepared for distribution to Northern's personnel in the Wire and Cable Division, while twenty other sheets, without such an identification, were to be prepared for distribution to Northern's competitors (Evidence, pp. 546-7).

D. C. Borden was examined as follows with respect to the reason for using plain envelopes, plain paper, etc. in exchanging information between manufacturers:

"Q. Would you look at document coded 3NE5-2-3? Is that, presumably, the envelope in which this came? (The reference here is to Exhibit 123)

A. That came in an envelope like that.

Q. This is addressed D. C. Borden, P. O. Box 6124, Montreal, Quebec, and it is marked 'Personal'?

A. Yes.

Q. Is there any reason for this coming in this envelope? It originates with Mr. Fitzgerald of Phillips Electric. Is there any reason for them not using their regular stationery or their letterhead or envelopes?

A. It is just one of those things that was done long before I came around and it is still done with the exception

that Mr. Macpherson used to open them up. Now the stenographer opens them and sends them direct to Macdonald and I do not see them. The reason for using a plain envelope was because it was always done that way." (Evidence, p. 479)

He was further questioned with respect to the same subject at a later stage in the examination:

"Q. Is this system of circulating memoranda between various manufacturers in plain envelopes and plain paper part of this over-all camouflage?

A. Again, I inherited it.

Q. I appreciate that.

A. It looks like it to me. I didn't start it. It certainly seems to be that sort of a thing.

Q. Who is the object of the camouflage; is it the consumer?

A. I don't know. I have asked that question several times and I don't know the answer.

Q. Have you ever discussed this with your chief, and I understand your chief is Mr. Eastlake?

A. Yes.

Q. Have you ever discussed this camouflage with Mr. Eastlake?

A. Yes.

Q. Have you ever had an explanation from him?

A. You don't need any explanation. He has much the same opinion about it as I have and he has expressed them to me within the last few weeks." (Evidence, pp.500-1)

The letters of designation or identification that have been used for each of the companies are as follows:

<u>Northern</u> - "M" originally designated Mr. Macpherson and now designates Mr. Borden (Evidence, pp.435-6). "B" may be used occasionally.

<u>C. G. E.</u> - 1930-1945 - "L'y" and "L" for C. S. Leary. 1945 - present - "B" for F. W. Barnhouse (Evidence, pp. 82, 1494-5).

<u>Canada Wire</u> - At the present time "L's" for L. G. Lumbers is being used; prior to that "G" for T. A. Gass was used (Evidence, pp. 1825-6).

<u>Automatic & Phillips</u> - At the present time "F" designates J. H. Fitzgerald; prior to that "T" for P. A. Timmons was used (Evidence, pp. 615-6; 825).

C. C. & F. - "L", "L'N" and "LO" have all been used at some time in order to designate V. N. Longtin (Evidence, pp. 906-7; 985; 990).

Federal - Normally the letter "S" for J. Godfrey Smith is used, but occasionally "B" for T. J. Bell may be used (Evidence, p. 1887).

Boston - "A" for G. W. Arnold is the only letter of designation that has been used (Evidence, p.1240).

Triangle - "K" for J. W. Kerr is now used, and prior to that "G" or "GR" for W. R. Greenshields was used (Evidence, pp. 580, 906, 1384).

Industrial - Since 1943 or 1944 "W" has been used to designate either A. A. Wagman or W. Wagman (Evidence, pp. 2009-10).

Although the letter in each case is the initial of the surname of an official of the company, it is generally intended to designate the company rather than the official (Evidence, pp. 67-72).

Generally, when memoranda are referred to elsewhere in this statement they will be memoranda of the type described in this section as circulating memoranda unless the context indicates otherwise or unless otherwise specified.

3. Telephone

Information has been exchanged among the manufacturers by telephone for the purpose of arriving at and implementing agreements or arrangements with respect to uniform prices and conditions of sale. Undoubtedly information of all kinds has been exchanged by telephone, but among other things information was regularly exchanged in this manner on tenders and on changes to be made in base prices.

Information on individual tenders has been exchanged both by memoranda and by telephone. Some witnesses, however, indicated that the information which they received with regard to prices to be quoted on individual tenders came almost entirely by telephone. V. N. Longtin of C. C. & F. did not think that they received such information by mail. He said that if they were unable to determine the price to be quoted on a particular item of cable by using the Phillips price book, they would secure the information from Northern by telephone. He further stated that there had been a discussion over the telephone with regard to lowering prices on certain tenders in order to meet British competition. The decision arrived at was that it would be open to any company to lower its prices below the prices regularly quoted if their costs permitted them to do so (Evidence, pp. 859-62, 873). Miss Martell of C. C. & F. indicated that information on tenders was exchanged by telephone and memoranda (Evidence, pp. 995-6). G. W. Arnold of Boston maintained that if he wished to ascertain what other manufacturers were quoting on a special item, he would call one of them by telephone (Evidence, pp. 1212-3). C. S. Leary of C. G. E. did not think that individual tenders were discussed at meetings, but said that there was an exchange of information on tenders

by telephone and memoranda, the object being to arrive at a uniform price:

"Q. Was price information on prices or on quotations to be quoted exchanged between manufacturers?

A. At times, yes.

Q. And what was the reason for that?

A. The reason, I believe was that on those particular products we all, at least we were anxious to make a reasonable margin of profit. It certainly was never large. It was more from an orderly marketing standpoint, I would say, sir.

Q. Was it with the object of arriving at a uniform price as between the manufacturers?

A. I imagine that was the objective.

Q. How was this information exchanged, that is, was it by telephone or was it at meetings, or was it by letters or memoranda or what were the media?

A. It could have been either by telephone or, as you refer to, a memorandum. I question if the information to any extent on a tender was discussed at a meeting."
(Evidence, pp. 1469-70)

Proposed changes in base prices were discussed by telephone by the representatives of some of the manufacturers. Generally, changes in base prices resulted from changes in the price of copper or lead but, on occasion, fluctuations in other costs such as labour were taken into consideration in revisions of the base prices (Evidence, pp. 1743-4). T. J. Bell of Federal stated that the amount of increase or decrease in the base prices, based on the E. & M. J. average figure, would usually be discussed by telephone with the other manufacturers before the base prices were adjusted (Evidence, pp. 1932-3).

Information on other subjects, such as map freight rates, jobber appointments, list prices, etc., was also exchanged by telephone (Evidence, pp. 217-8, 715-6, 1580, 1760-1, 1804-5). Meetings of manufacturers' representatives were frequently called by telephone as well as by memoranda (Evidence, pp. 1325-6, 1328-9, 1599).

4. Mechanics of Price Determination

Prior to 1950 preparation of basic price figures, which were the subject of discussion and eventual agreement among the collaborating manufacturers, was the responsibility of Northern, except for a few products to which later reference will be made. In carrying out this task Northern first made cost studies and then prepared tentative prices. These prices appear to have taken into account not only the cost situation but relevant market considerations including the laid-down prices of competitive products which might be imported from abroad, particularly the United States. Tentative prices so arrived at were then submitted for consideration to all the manufacturers concerned with the product in question. This was done through the several media for communication discussed above, chiefly circulating memoranda. In this way the views of all concerned were collected and reconciled, after which agreement was reached upon common prices. Northern then circulated memoranda setting out the agreed-upon prices to all the parties to the agreements, usually indicating the date upon which they would become effective. As a result of this procedure published price lists, which most of the manufacturers issued to their customers, contained identical prices in respect of all products to which this arrangement applied.

As indicated above, during the pre-1950 period there were a few products in respect of which Northern did not prepare the prices. These products were either items not made by Northern or items upon which patents were held by others. In such cases the manufacturer concerned prepared the necessary cost studies and submitted prices to be used as the basis for discussion. The same company also circulated proposals as to prices in memoranda and dealt with them up to and including the stage of agreement. At this point Northern took over and forwarded memoranda containing the agreed-upon prices and effective dates (where applicable) so that subsequent procedure was precisely as described in the foregoing paragraph.

Early in 1950 agreement was reached upon a greater degree of participation by the other manufacturers in the preparation of basic price proposals, and this continued substantially in effect up to the time of the inquiry. Northern was relieved of the responsibility for doing the bulk of the work, which was more evenly shared among the collaborating manufacturers. Under the new system cost studies and proposals were made just as before, and the prices were agreed upon and adopted by all the manufacturers in the same way. The only point of difference was that each of the various manufacturers was allocated certain products and carried out all the necessary administrative procedure for bringing about final agreement. In other words, Northern was no longer the research agency and clearing house for pricing information to the same extent as before 1950.

K. P. Macpherson of Northern in his evidence before the Commissioner explained the basis upon which Northern was responsible for preparing pricing information prior to 1950 and also the reason why this arrangement was terminated, in the following passages:

> "A. . . . Many years ago, because we had a larger office staff than some of the rest of them, we used to do all of the slavey work and it became too much. We said, 'No, we are not going to do it any more.'

Q. When you said no, you said it to the other manufacturers for whom you were doing this slavey work?

A. Yes.

. . .

Q. Was it detail in connection with issuing price sheets and changes and revisions; is that correct?

A. Yes." (Evidence, pp. 116-7)

The nature of this detailed work done prior to 1950 was explained by the same witness as follows:

"Q. Did you also act as clearing house for price information?

A. In some cases, yes; in some cases, no.

Q. Who did?

A. Other manufacturers.

Q. Who?

A. Canadian Wire and Cable does some things; Canadian General Electric some.

Q. By that I take it you mean on some types of wire and cable or wire and cable products they prepare the price information?

A. They do the necessary studies and so on.

Q. Then on other things Northern Electric would do it?

A. Yes.

Q. In the case where the studies were prepared, say, by Canadian Wire and Cable, would they then send you the result of their studies?

A. They would.

Q. Then would you subsequently issue price sheets?

A. Not necessarily.

Q. In some cases did you?

A. Not of theirs. They issued their own.

Q. If they sent the sheets after they had prepared the studies, they would send them to you?

A. Not all of them." (Evidence, pp. 86-7)

"Q. Can you say what the practice was at the time this memorandum was written, which was June 30, 1947, with regard to the working out of cost studies on the items indicated

in the memorandum? I think you told us at that time Northern Electric published all the prices?

A. That is correct.

Q. That you were doing this detail work on behalf of yourself and the other manufacturers. From this memorandum is it correct to assume that the Canadian General Electric were working on certain studies on asbestos wire and cable and so on?

A. I hoped they would be doing that all the time as we did.

Q. At that time there was no distribution of work between the various manufacturers with respect to the studies which would be prepared by each of them?

A. Oh, there always has been some done by some companies, some articles that are controlled by or originated from other people other than Northern." (Evidence, pp. 138-9)

He further explained that the products referred to in the above passage were products on which C. G. E. held patents and licensed Northern as a manufacturer (Evidence, p. 140).

T. A. Gass, of Canada Wire, described the role of Northern during his examination, as follows:

"Q. Am I correct in my understanding that prior to that time [1950] most of the advice on prices emanated from one manufacturer and they acted as the clearing house for information?

A. You are correct.

Q. That was Northern Electric Company?

A. That is correct

Q. But I take it from what you have said they did not necessarily do all the costing or the working out of suggested prices, but actually acted more as a clearing house?

A. That is my understanding.

Q. That is, during that period prior to this allocation of responsibility there would be certain lines of products that your company might very well work out the detailed costing of the suggested prices?

A. Yes. . . ." (Evidence, pp. 1644-5)

In another passage Mr. Gass indicated that the same procedure applied even in respect of rectangular magnet wire, a product not manufactured by Northern and for which Mr. Gass had prepared the price information (Evidence, pp. 153-4). This was supported by documentary evidence (Ex. 56, CWC 48-6, 2736-40). The meaning attached to this procedure by K. P. Macpherson appears in the following exchange with his own counsel:

"Q. So you stated, I think, that for some time Northern Electric was doing the mechanical matter of pricing some of those various lines of goods?

A. That is correct." (Evidence, p. 303)

The evidence of V. N. Longtin was also that until about three years ago, Northern prepared and distributed all the price studies and lists as far as C. C. & F. were concerned (Evidence, pp. 849 and 888). Northern acted as a clearing centre for price information (Evidence, p. 859).

G. W. Arnold of Boston also said that Northern distributed pricing information:

"Q. . . . Why would you ask Mr. Macpherson if your company could have prices effective on a certain date?

A. It was not my company. It was the whole trade.

Q. Why would you ask Mr. Macpherson if the whole trade could adopt these prices on a certain date?

A. So we could pass the information on.

Q. Was that the usual method that was used by manufacturers?

A. I would say yes. We kept each other informed.

Q. You said a moment ago the reason you would include a sentence such as the last one in this exhibit was that Mr. Macpherson would pass it on to the trade?

A. Yes.

Q. Was part of Mr. McPherson's duties or responsibilities to pass information on to the trade?

A. No.

Q. Can you explain what you mean?

A. I would say that he did it." (Evidence, pp. 1282-3)

W. R. Greenshields of Triangle also testified that Northern prepared price information for all manufacturers prior to 1949 (Evidence, p. 1382).

C. S. Leary of C. G. E. also said that when he came into the industry in 1930, C. G. E. was receiving pricing information from Northern (Evidence, p. 1464). It would thus appear evident that the only prices which C. G. E. took care of prior to 1949 were those on products for which they held patents. Mr. Leary's evidence in this regard was:

"Q. During the period 1930 until Mr. Barnhouse came as your assistant, were there any wire and cable products for which your Company prepared the prices and which the

other manufacturers used as the basis for their prices?

A. There were, sir.

Q. What lines were those?

A. During the latter part of 1938 or 1939, both periods, our company introduced two new products. One was a synthetic insulated wire cable, and the other was a synthetic insulated magnet wire. Shortly after introducing them the war came along, and we in C. G. E. discovered that there was going to be a large demand for these products. We had not the facilities to tool up to take care of the demand in Canada for them. We offered a licence agreement to the other companies, and to those companies that took a licence we did establish a selling price on those products.

THE COMMISSIONER:

That is, you licensed other manufacturers to produce these products and fixed the price at which they would be sold?

A. That was the idea, Mr. Commissioner.

(Evidence, pp. 1468-9)

The evidence of F. W. Barnhouse of C. G. E. was also to the effect that in the period 1945-49 Northern prepared and circulated prices for wire and cable products in the majority of cases (Evidence, pp. 1539-40, 1563-4, 1564-5). He also confirmed that for some products prices were prepared by other manufacturers but distributed by Northern (Evidence, p. 1568).

T. J. Bell of Federal testified also as to his recollection that Northern prepared most of the prices prior to 1950 and indicated why he thought this practice had developed:

"Q. Prior to this allocation by the manufacturers on January 24, 1950, who prepared prices for what products?

A. To the best of my memory Northern Electric Company prepared most of the prices. They have been the established leader in the wire and cable field since the turn of the century and their prices were usually adopted by practically all the people in the business. They have the largest plant and have the largest output and they had the greatest distribution. I would say that all phases of their costs have been more economical than any one else's for the last few years. It does not necessarily mean that all the manufacturers adopted their prices, but I think most of them did. If they did not, they could not sell."

(Evidence, pp. 1895-6)

"Q. Was the practice in the industry at that time in 1947 that the Northern Electric acted as a clearing house for price information?

A. The Northern Electric Company issued most of the price sheets and if we cared to adopt them, we could. I would not say that they issued them all because there are many products in which they were not in the market. I do not believe they sold magnet wire to the trade or cord sets to the trade.

Q. But they still published price information as prepared by somebody else?

A. They might have; I can't say positively they did. It might have been the pattern, but I can't say, not with assurance." (Evidence, p. 1905)

Finally, A. A. Wagman of Industrial also stated that Northern was the principal source of information prior to 1950:

"Q. Now, I think you told us this morning that up until this division which had been made some time, two years or approximately two years ago, that you were receiving your advice on prices from Mr. Macpherson of the Northern Electric?

A. Yes.

Q. Now, did you receive advice on Type T cable from Northern Electric?

A. Yes. My -- up until the division, of that date, 1950, all our information came from one source."
(Evidence, p. 2017)

At a meeting held on January 24, 1950 (Evidence, p. 1894), the representatives of the wire and cable manufacturers, with the exception of Industrial which was not represented at the meeting, decided to depart from the practice whereby Northern took the principal part in the preparation and issuance of price lists. An allocation of products for these purposes was made among the manufacturers (MacDonald - Evidence, p. 578). A memorandum of this meeting, prepared by T. J. Bell of Federal (Evidence, pp. 1892-3) and sent to G. W. Arnold of Boston, set out the pricing arrangements in detail as follows:

"The pricing set-up is to be taken care of in the following manner:-

| | | |
|---|---|---|
| AC and ACL | - | -Canadian Triangle |
| Rubber Covered Wire<br>Type 'T' wire<br>Flexible Cords<br>Etc. | ) | -Northern Electric |
| Paper Power Cable<br>Weatherproof Wire<br>Annunciator Wire | ) | -Phillips Electrical Works |

| | |
|---|---|
| All magnet wire<br>Bare Wire<br>Automotive Replacement Cable | -Canada Wire and Cable Company |
| Varnished Cambric, Asbestos and Lead Covered Wire | -Canadian General Electric Company |
| Cord Sets | -Federal Wire and Cable Company |

In future all companies will be responsible for price changes and for adequate price information on these commodities."
(Ex. 304, 2BIW 8-3, 9191-3)

K. P. Macpherson was questioned about the allocation of products to the various manufacturers for the purpose of pricing, in the following exchange:

"Q. The day before yesterday, Mr. Macpherson, you mentioned, I think a year or two years ago -- you can correct me on this -- there had been a change in the system which was being followed and as a result of the change Northern Electric Company ceased to do all the detail work for all the types of wire and cable and it was distributed around to the other manufacturers?

A. Yes.

Q. Could you correct me on approximately when there was that re-division?

A. I would have to correct myself.

Q. Can you tell me, from your knowledge and from recollection, whether the pricing set-up that was arranged at that time would provide for AC and ACL to be taken care of by Canadian Triangle?

A. As I recall that, that was one of the things we were supposed to do.

Q. Was Northern Electric supposed to handle rubber covered wire, type T wire and flexible cords?

A. That I think is correct.

Q. Were there any other types of wire other than that to which I have referred; that is rubber covered wire, type T wire and flexible cord to be handled by Northern Electric in the information and pricing in this redistribution work?

A. Well, there would be the other things which involve the use of rubber. You are talking here about the ordinary corded building wire and that sort of thing, but any other rubber covered, it did, because the information would be there.

Q. P.I.L.C. power cable, weather proof wire and annunciator wire to be taken care of by Phillips Electrical Works; would that be correct?

A. I believe it is.

Q. And all magnet wire, bare wire and automotive replacement cable to be taken care of by Canada Wire and Cable Company; would that be correct?

A. Yes.

Q. And varnished cambric, asbestos and lead covered wire, to be taken care of by Canadian General Electric Company?

A. I think that is correct. I do not positively remember the various items; there are so many.

Q. I think you said on this the other day that Mr. Clish would probably furnish the information?

A. Or Mr. MacDonald.

Q. And cord sets to be taken care of by Federal Wire and Cable Company.

A. That might be right.

Q. You do not remember the date when that arrangement was made?

A. I cannot remember the date when it was made or the exact details." (Evidence, pp. 178-80)

C. S. Leary of C. G. E. was shown Exhibit 304 and asked if he recalled whether the subject had been discussed at a meeting of manufacturers at which he was present. To this he replied:

"A. I do, sir.

Q. And is this the allocation or division of responsibility for the preparation of prices by different companies for different products, different wire and cable products? Is that what is indicated here?

A. That is what is indicated, sir.

Q. And is that what was discussed and agreed at the meeting at which you were present?

A. It was discussed. Whether it has been implemented entirely or not I cannot say on that.

Q. Mr. Barnhouse will be in a position to comment on that?

A. He will be able to comment on that.

Q. But you remember being present at the meeting?

A. I was present." (Evidence, pp. 1520-1)

F. W. Barnhouse of C. G. E. said that the list of products and companies responsible for preparing prices as set out in Exhibit 304 was approximately right. He was questioned about the meeting at which this allocation was made:

"Q. Do you remember attending a meeting at which there was a rather general revision of this division of responsibility for the preparation of price information?

A. I think it was brought up at one meeting at some time or other.

Q. And was it at that meeting that the load was taken off Northern Electric to some extent and distributed amongst some of the other manufacturers?

A. That was the intention.

Q. Then does this list in item 4 represent the allocation or division of responsibility which was made at that time?

A. I don't remember the date. It probably is but I don't remember the date.

Q. But you think there may have been some changes since that time?

A. That is correct." (Evidence, pp.1629-30)

However, Mr. Barnhouse said in the course of his evidence that his company were supposed to be issuing price information on Varnish Cambric but had not done so yet:

"Q. Well, when you say you are supposed to be issuing it, are you referring to the allocation which was made and to which you have made earlier reference, that is, between manufacturers?

A. That is correct.

Q. That is why you say you are supposed to do it?

A. Yes." (Evidence, p. 1576)

The allocation or division of responsibility as set out in Exhibit 304 was discussed with L. G. Lumbers of Canada Wire and he outlined the undertaking entered into by his company when this agreement was made:

"A. What we undertook here was to do all the pricing and pricing cost studies on bare wire and automobile wire. Our company would make price studies and continual checks and that would be our responsibility.

Q. Would that responsibility also involve advising your competitors of the results obtained from these studies?

A. That is right.

Q. Would that also involve forwarding to your competitors these proposed prices which we referred to earlier this morning?

A. Yes.

Q. Do you know whether any change in this allocation or division of responsibility has been made since June 24, 1950, or since your meeting?

A. To the best of my knowledge these things are still in effect.

Q. If there are any changes would Mr. Pryce be in a position to say what changes there had been?

A. Yes, he would." (Evidence, pp. 1795-6)

When Exhibit 304 was shown to J. H. Pryce of Canada Wire he admitted that the set-up had been discussed by the manufacturers and agreed to:

"Q. . . . Do you recall attending a meeting or meetings of manufacturers at which this subject came up for discussion?

A. That is right.

Q. As a result of that meeting was it agreed that the companies indicated would prepare price information for the products indicated opposite their respective names?

A. Yes.

. . .

Q. Have there been any changes to the list of products for which companies are responsible in the preparation of price information since that date, or does that represent what the situation is today in the industry?

A. You mean changes in this particular set-up?

Q. Yes, in the allocation or division of responsibility between companies for these different products. For example, does the Canadian Triangle prepare price information on AC and ACL?

A. Yes.

Q. Does it prepare price information on any other wire or cable, to your knowledge?

A. No.

Q. Would the same question and answer apply in the case of Northern Electric?

A. I believe Northern Electric have omitted flexible cords.

Q. Do you know who now is preparing that?

A. I believe Federal Wire & Cable Company are. This is the only change I see here, Mr. Hunter. The others appear just as they are to-day.

Q. Do you remember approximately when this arrangement was made?

A. I don't remember, but the date of this exhibit would appear to be the date that that arrangement came into effect."
(Evidence, pp. 1810-2)

T. J. Bell of Federal in his evidence indicated that this Exhibit originated with him and he outlined how the distribution came about and why:

"MR. HUNTER: Q. I show you Exhibit No. 304, Col. Bell. Would you look through that document, please? This is dated January 24, 1950.

THE COMMISSIONER: Your counsel may read it at the same time, Col. Bell.

MR. HUNTER: Q. Can you identify the source of that document?

A. I would claim it is mine. I think it is. It is signed with an 'S', which obviously identifies it as a document originating in the Federal Wire & Cable Company.

Q. You mentioned that you have attended meetings and subsequently made notes for your own use?

A. Yes.

Q. Does this document represent the notes that you made following a meeting?

A. Since it is on the file number of the Boston Insulated Wire & Cable Company, I would say that it was notes that I made and sent to Mr. Arnold who had not been able to be present at the meeting, to give him some guide as to what was discussed. It is not a normal thing for me to do so.

Q. Would you refer to Item No. 4, please?

A. Yes.

Q. Could you explain what is meant by the pricing set-up to be taken care of in the following manner?

1893

A. Yes, I would say that this item refers to the manufacturers who are predominant in the various fields. For example, AC and ACL, I would say the largest producer in the industry is Canadian Triangle, and since they are the largest and most efficient producer they were given the job of conducting cost studies and arriving at a most economical price that AC and ACL would be sold. Their prices were sent to other people and if they choose to adopt them,

that was O.K., and if they did not, that was all right. That is true with each group. These people happened to be the leaders in that particular phase of the industry. I say they are the largest producers and the most efficient and their costs would determine the selling price. Other people, if they chose to adopt them, that would be fine, and if they did not choose to adopt them, that was fine. It is indicative of the breakdown of the industry into groups.

Q. That is, I take it then, the allocation that was made at a meeting held on January 24,1950?

A. I would say yes. You see, one of the reasons that gave rise to that was that sometimes you were dissatisfied with the prices we had and people that had the most experience with producing different types were certainly the people to do the work on them.

Q. Have there been any changes in this allocation since January 24, 1950?

A. To my knowledge, no.

Q. I take it then the only product that your company was allocated was cord sets?

A. That is true. As a matter of fact, almost all the manufacturers except ours have gone out of this business because it is uneconomical.

Q. I take it that the other manufacturers are more efficient, to your knowledge, in the other lines than you are.

A. I would say that except regarding magnet wire only we are as efficient as anyone, but we were not the largest producer. Canada Wire is the largest producer.

Q. To the extent that this item refers to power cable, of course, your company is not interested, in any event?

A. That is correct.

. . .

Q. Am I correct in my understanding of the explanation that you earlier gave, that this re-allocation took place because it was felt that the most efficient or lowest cost manufacturer should prepare the prices for other manufacturers?

A. Let me say that this was more realistic.

Q. Than the situation that existed prior to that time?

A. Yes; since the beginning of the century there has been a tremendous growth in this industry. There was no change during the war because our prices were controlled.

We had much more important things on our minds than our marketing and while this might have occurred earlier the war intervened and made it unimportant."

(Evidence, pp. 1892-6)

A. A.Wagman of Industrial admitted receiving price information from other manufacturers and was asked if there had been any other change in the source of this information since that time. In the case of non-metallic sheathed cable he said that there had been a change and that the information now came from C. C. & F. He said that Industrial was not responsible for the preparation of any pricing information for the industry because it was not large enough and had not been approached. He stated that he was not present at the meeting when the division of work was decided upon and that he learned about it indirectly. He thought that the division had taken place some two or three years ago (Evidence, pp. 2005-7) and was questioned as to why the division was made and the present source of his pricing information:

"Q. I take it from what you have stated, Mr. Wagman, that you do not know on what basis this division was made: that is, why, say, Phillips would be responsible for the item indicated or why Northern would be responsible for the item indicated?

A. I would imagine because they must be the largest producer of that particular product.

Q. I see. Has there been any change in this division since this document was written? I think you have indicated there was non-metallic sheathed cable which was now Cables, Conduits & Fittings.

A. Well, there must have been at that time too because no one else had it.

Q. I see, but you manufacture non-metallic sheathed cable now, do you?

A. We always have, right from the beginning.

Q. Now, have you during the last two years been receiving advice from the companies indicated with respect to the products indicated in this item No. 4 of Exhibit 304?

A. Well, AC and ACL, yes, TW yes; non-metallic, yes; weatherproof wire, no; and bare wire, no, because we have just been manufacturing the past year.

Q. From whom do you receive advice on weatherproof wire?

A. I believe it would be Phillips Electrical.

Q. I see, and in the case of bare wire?

A. Canada Wire & Cable.

Q. But the reason you qualify that is because you have just come into production?

A. That is right.

Q. Of those two items during the last year, so that you have only had the advice from them for the last year?

A. That is true. I wouldn't have any knowledge prior to that." (Evidence, pp.2007-8)

Later in his evidence Mr. Wagman indicated that under this division of prices they were supposed to be advised of price changes prior to the effective date but on occasion the information would be delayed in the mail:

"Q. And where you did not get this information as soon as you should have, would you get in touch with your source of information and tell him --

A. I would make enquiries, yes.

Q. And find out what is --

A. What happened, yes.

Q. Because under the scheme of arrangement on this division, you were supposed to get these ahead of time, weren't you?

A. That is true." (Evidence, p. 2034)

The evidence of S. H. R. Clish of Northern was as follows:

"Q. At the present time, to your knowledge, is there any arrangement or agreement between manufacturers that certain manufacturers should be responsible for the preparation of price information on certain types of products and certain other manufacturers are responsible for price information on other products?

A. Each and every one of us, naturally, are studying our gross profits and costs and prices but there have been various manufacturers who introduce something into the field and the first man into the field with a particular product the firm will be keeping a close eye on that product. If we receive anything from him it is used as a price that we know is competitive in the field." (Evidence, p. 517)

That the prices developed by the several manufacturers were adopted by Northern for inclusion in its price books appeared from the evidence of Mr. Clish, who testified that the sources of prices in his company's price books were:

| | |
|---|---|
| Bare Copper | - Canada Wire and Cable prepares the prices and Northern Electric the base price. |
| Neoprene Weatherproof | - Northern Electric. |
| Magnet Wire | - Canada Wire and Cable. |
| Annunciator Wire | - Phillips |
| Code Wire | - Northern Electric |
| Thermo plastic Insulated | - Northern Eoectric |

| | | |
|---|---|---|
| Rubber Insulated Braided Covered Wires | - | Northern Electric |
| Flexible Cords | - | Federal |
| Rubber Insulated Lead Covered Building Wire | - | Northern Electric |
| Fixture Wires | - | several sources |
| Non-Metallic Sheathed Cable | - | Cables, Conduits & Fittings |
| AC and ACL | - | Canadian Triangle |
| Service Entrance Cable | - | Northern Electric |
| Rubber Covered Telephone Wires | - | Northern Electric |
| Antenna Wire | - | Source not known, fluctuates with base price |
| Pre-Assembled Aerial Cable | - | Canada Wire and Cable |
| R.I.N.J. | - | C.G.E. |

(Evidence, pp. 523-8)

J. H. Fitzgerald of Phillips also outlined the source of pricing information received by his company from other manufacturers:

"A. I will have to speak from memory when speaking as to standard lines. Northern Electric would prepare rubber covered, and I believe rubber-lead. Ourselves, Phillips, we look after weatherproof and enunciator (sic) wire and paper power cable. Canada Wire, bare copper magnetic wire. There may be something else; I am not sure. Canadian General Electric varnished Cambric cables and Asbestos type cables. Cables, Conduits & Fittings non-metallic sheath cables. Canada Triangle AC and ACL. That is armoured cable and armoured cable lead. I believe the Federal look after cord sets. Canada Wire, I think, look after automotive as well.

Q. Who looks after flexible cords?

A. That would be Northern Electric. That is cordage.

MR. DIXON:

Q. I think you are misunderstanding. Flexible cord?

A. I believe the cordage itself, Northern Electric look after that." (Evidence, pp. 599-600)

Mr. Fitzgerald also said that the allocation or division of responsibility with respect to the preparation of pricing information was adopted two or three years ago by the industry as a result of discussions which had taken place at meetings. Under this arrangement the manufacturers had agreed to reprint or prepare price lists based on competitors' figures according to such allocation or division of responsibility. (Evidence, p.601).

V. N. Longtin of C. C. & F. recalled that such an allocation of responsibility for pricing had taken place about two years ago. He did not think the set-up had been materially changed since that time (Evidence, pp. 874-5). Miss Martel of the same company was more familiar with the pricing arrangements. She testified as follows:

"Q. And do you know, or can you tell, what price lists or price information is prepared by your company in the first instance, and then circulated or distributed to the other manufacturers?

A. Yes; our line of non-metallic sheathed cable.

Q. And in that line do you prepare the prices, circulate those prices to the other manufacturers? And to your knowledge, do they adopt your prices on that line?

A. I believe so.

Q. Except for that line, do you receive the balance of your prices from other manufacturers?

A. The majority of them, yes.

Q. And could you give us, are you familiar enough with the matter, to give us an indication of what manufacturers prepare prices, and on what type of cable?

A. Well, on our lead covered armoured cable. They are covered steel. I believe Canadian Triangle in Toronto.

Q. Commonly referred to as BX and BXL?

A. Sometimes referred to as AC and ACL, and that is Canadian Triangle that does that.

Q. And on what other lines do you receive prices from other manufacturers?

A. Well, I am not quite sure. There is the type 'R' and the type 'TW', and I believe they come from Northern Electric.

Q. And what about RILC rubber insulated lead covering?

A. That would be Northern Electric Company.

Q. And what about the PILC?

A. Well, we have received some from Northern Electric Company, and there is also a price list book put out both by Phillips Electrical Company and Canada Wire and Cable.

Q. Since the issuance of the Phillips and the Canada Wire and Cable books on OILC, have you also been receiving the Northern Electric price information on PILC?

A. No, I don't believe we have received anything from them since the publication of the other two books.

Q. And who prepares the prices on varnished cambric?

A. The prices we have come from Northern Electric.

Q. Have you ever received any price information on varnished cambric from the Canadian General Electric?

A. No.

Q. And what products, if any, does the Canada Wire and Cable Company give price information on?

A. We receive some prices on bare copper annunciator wire and weatherproof.

Q. And what about magnet wire?

A. We don't deal in magnet wire.

Q. What about the item referred to as cord sets?

A. We don't make cord sets.

Q. And do you receive any price information from the Canadian General Electric Company?

A. No, I don't think there is anything we receive that comes from the Canadian General Electric Company.

Q. Do you manufacture asbestos and lead covered wire?

A. We haven't, no." (Evidence, pp. 980-2)

G. W. Arnold of Boston was asked if he had attended a meeting at which a division of responsibility for preparation of prices was discussed and arrangements made as to who would prepare prices. In reply he said:

"A. It lies in the back of my mind that there was at some meeting certain products that one company would follow up and certain other products that another company would follow up." (Evidence, p. 1295)

He said that they had not been responsible for preparing any prices with the exception of elevator cables.

W. R. Greenshields of Triangle was not sure what pricing information was prepared by other manufacturers but said that Triangle had been preparing prices for AC and ACL since 1949. Prior to that time Northern had been preparing all the pricing information for the other manufacturers. In 1949 the new distribution or division of responsibility took place and Mr. Greenshields said that the subject had been discussed and agreed to at meetings of the manufacturers (Evidence, pp. 1381-2). With the exception of prices for AC and ACL, Triangle used prices supplied to them by other manufacturers. Mr. Greenshields said that before they accepted prices from other manufacturers they would check them against their own costs (Evidence, pp. 1449-50).

The distribution of prices issued by Northern at the time of the hearings before the Commissioner was outlined in what is called a "Master Book Mailing List Index" dated November 19th, 1951. This volume was coded 3NE 16-1, and 16-3 and was filed as Exhibit 146. In addition there is a card included with this exhibit and coded 3NE 16-2 which outlined the distribution of Power Cable information.

S. H. R. Clish of Northern stated that the card referring to the distribution of Power Cable information was out of date and did not indicate what presently was being sent out by Northern (Evidence, pp. 557-8). The parties to whom the pricing information was sent were designated by initials and Mr. Clish identified the recipients in each case. The mailing list referred to indicated that Northern was issuing price sheets on the following products:

Bare Wires and Cables

Base prices
Brass Wire Bare
Copper Wires and Cables - Bare, Round, Square and Rectangular
Strandings
Furnace Lead Cables
Copperweld Wires and Cables - bare
" Wires and Cables - bare
" Copper Wires - bare
Aluminum Wires and Cables
Steel Wires and Cables
Weatherproof Copper Wires and Cables
Weatherproof Copperweld Wires
Annunciator Wires and Cables
Lead Sleeving
Magnet Wires

Rubber or Thermoplastic Insulated (Cab Tire) Wires and Cables

Zone prices
Standard Cab Tire Cables (Type "S") No. 18-10
Standard Cab Tire Cables (Type "S") No. 8 and larger.
Standard Cab Tire Cable (Neoprene Jacketted) Type "SO"
Super Cab Tire (Neoprene Jacketted) Cables
Super Cab Tire (Neoprene Jacketted) Cables
Thermoplastic Insulated Cab Tire Cable
Welding Cables - Rubber Covered

Thermoplastic Insulated Wires and Cables - Flameseal Wires and Cables

Service Entrance Cable

Rubber Insulated Braid Covered Wires and Cables - Additions for Rubber Insulated Braid Covered Wires and Cables

Type "R" (Code) R.C. & B. 600 Volts, Building Wires

Specimens from a stock of pre-addressed envelopes from the files of Northern were tendered in evidence, and S. H. R. Clish testified about them, as follows:

"Q. I show you documents coded 3NE 15-1-1 to 3NE 15-1-28, Serials 4537 to 4564. These were documents which were removed from the files of the Northern Electric. Could you identify ever having seen these documents before? They appear to be a set of envelopes.

A. They are envelopes that the Northern Electric run off in quantities so they will have them available to send out

price sheets if and when price sheets are sent to the General Sales Division and sent to our houses.

Q. I take it that these envelopes are used to send this information to your competitors' representatives; is that right?

A. Yes.

Q. Would you look at the document coded 3NE 15-1-4 addressed to Mr. H. Price? Is that the Mr. Price, I think you said, that was with Canada Wire & Cable?

A. Yes.

Q. Is that addressed to the Canada Wire & Cable of Toronto?

A. No, it is his home address. I believe that it was sent to him at his request to that address."

(Evidence, pp. 558-9)

These pre-addressed envelopes were addressed to the following persons:

W. Wagman,
Industrial Wire & Cable Co.,
35 Golden Ave.,
Toronto 3, Ont.

Miss S. Kinsella,
Canada Wire & Cable Co. Ltd.,
Toronto, Ont.

Mr. W. R. Greenshields,
Triangle, Conduit, & Cable (Canada) Ltd.,
4006 Dundas Street West,
Toronto 9, Ont.

Mr. J. G. Smith,
Federal Wire & Cable Co.,
Guelph, Ont.

Mr. L. G. Lumbers,
Canada Wire & Cable Co.,
Toronto, Ont.

G. W. Arnold,
Boston Insulated Wire & Cable,
Hamilton, Ont.

Mr. V. N. Longtin,
Cables, Conduits & Fittings Ltd.,
P. O. Drawer #605,
St. Johns, Que.

Mr. J.H. Fitzgerald,
c/o Phillips Electrical Works,
Brockville, Ont.

Mr. A. A. Wagman,
Industrial Wire & Cable Co.,
35 Golden Ave.,
Toronto 3, Ont.

Mr. L. Doering,
Steel Company of Canada,
525 Dominion Sq.,
Montreal, Que.

Mr. F. W. Barnhouse,
212 King Street, W.,
Toronto 1, Ont.

(Exhibit 147, 3NE 15-1,
4537-64)

The end result of the procedures outlined above has been that the published prices of the collaborating manufacturers were brought into uniformity, as the evidence indicates at pages 470, 698, 711, 802-3, 973, 1239, 1426, 1492-3, 1848, 1968-9 and 1998.

## III. Agreements or Arrangements upon Prices, Terms & Conditions of Sale

This section reviews in some detail the documentary evidence upon which it is alleged that the manufacturers agreed to adopt uniform prices for particular products and uniform terms and conditions of sale, and in some instances refers to the oral testimony brought to bear on these documents. The uniform terms and conditions of sale referred to included the classification of customers into categories to be sold at prescribed discounts from list prices and the adoption of arbitrary shipping charges, as well as other matters directly or indirectly related to price. Other evidence included here is the basis for my submission that prices were frequently set, not in relation to the costs of production of the more efficient manufacturers, as was frequently asserted by the witnesses, but rather in relation to the laid-down prices of products available for import from abroad.

### 1. Standard Footage Materials

A large number of wire and cable products in respect of which there were agreements or arrangements on prices may be described as standard footage materials. They are usually sold by the 1,000 feet at delivered prices which have been established for seven zones set up to cover the sales outlets across Canada. They are all, or nearly all, manufactured and stocked by each of the manufacturers named in this statement and may be considered their principal sustaining business.

Price changes have been worked out for each product as the occasion arose and general revisions applicable to the whole range of products have not been made. A number of products have on occasion been adjusted at one time but each individual product has been dealt with separately. Price changes on standard footage materials have not been as frequent as those on such products as tonnage materials. In most cases the price changes have involved exchange of pricing information by mail, telephone, meetings, or other means. When agreement has been reached by the manufacturers on the prices to be established, copies of such prices have been circulated to all interested manufacturers and used to prepare published price sheets.

That many of the practices referred to in this section have existed for a long time is supported by the evidence of T. A. Gass of Canada Wire who stated that the system was pretty much the same in 1912 (Evidence, pp. 1656-7) and G. W. Arnold of Boston who said that he had attended meetings of the manufacturers and forwarded the price lists of his company to the other manufacturers throughout the forty-one years he has been in the industry (Evidence, pp. 1208-9).

The practice of recording price agreements in circulating memoranda together with the date upon which the changes became effective is found in a memorandum dated January 20, 1933 from K. P. Macpherson of Northern and circulated to T. A. Gass of Canada Wire, R. H. Balfour of Phillips, J. S. Keenan of C. G. E., J. G. Smith of Federal and G. W. Arnold of Boston:

> "We are enclosing the new price sheets effective January 30th.
>
> You will please note that we have added Victoria as a Distributing Point in Zone #5 because one of the Vancouver jobbers also operates a warehouse in Victoria,

Prices on Intermediate and 30% Hevea grades on application only.

Types S and SJ are not included in Zone price set up with jobbers' protection.

Other sheets affected will be issued as soon as possible."

(Ex.4, 2BIW21-312, 12242)

K. P. Macpherson wrote again to the same parties on February 13, 1933 and the memorandum indicates that the manufacturers were expected to abide by the published prices:

"With reference to CSL's memorandum of February 10th,we are not desirous of seeing prices used in the West other than our standard published prices. The balance of the memorandum is answered in my reply to TAG."

(Ex. 7, 2BIW21-270, 12183)

A memorandum from K. P. Macpherson dated May 12, 1933 and directed to the same persons shows the nature of price discussions during the earlier stage of negotiation:

"Having given some further consideration to the question of our Type S and SJ prices we think it will be necessary to take cognizance of the published U. S. prices on the smaller sizes of type S and well as of type SJ.

It would be our idea to have four types as listed on the attached sheet,but the type S Light would be made in 2 conductor sizes 18, 16, and 14 only, and the remaining portion of the set-up would be as previously outlined.

We would like your opinion at the earliest moment."

(Ex. 7, 2BIW21-210-1, 12116)

In 1934 C. C. & F. began the manufacture of Rubber Covered Braided Code Wires and V.N.Longtin called on Northern for the necessary selling information. Referring to this matter K. P. Macpherson wrote a memorandum on July 11, 1934, as follows:

"Mr. Longtin called upon us yesterday and informed us that his firm was manufacturing Rubber Covered and Braided Code Wires in all sizes up to 500,000 c.m., that they had been building up stocks for some weeks and were about ready to approach the jobbers.

He asked us to supply him with the necessary commercial information in order that he might function along recognized lines. There seems to be no other course than to fully advise him on the matter and secure his co-operation but no action will be taken until we get an expression of opinion from you.

In this connection he is fully conversant with the Union Electric situation and had the idea that he would meet or better it but was persuaded not to do so as it was thought that Reg's firm would correct this situation at once, if they had not already done so."

(Ex.109,2BIW21-54,11871)

Replies were received from A. S. Edgar (C.G.E.), R. H. Balfour (Phillips), T. A. Gass (Canada Wire) and Smith (Federal). Each indicated that there was no other course but to supply the information but three of the replies suggested that such information be given with the understanding that prices would be maintained.

The part played by Northern in preparing price information and circulating prices, discussed in Section II, is illustrated by three memoranda circulated by K. P. Macpherson of Northern in February 1935 (Exhibit 9, 2BIW22-71, 10865, February 5, 1935; 2BIW22-38, 10828, February 21, 1935; 2BIW22-42, 10832, February 21, 1935.)

The restrictive arrangements which prevailed in the industry and the understanding that adjustments to prices would be made only after consulting all parties concerned, at times have prevented normal competitive forces from bringing about a reduction in prices. Such a situation arose on July 5, 1935 when Mr. Macpherson of Northern sent out the following memorandum:

> "Re T.A.G.'s memo of June 25th, I have investigated and I find no general price reductions in effect which will warrant a reduction on P. O. Cord Sets, as suggested by you. We are, however, willing to discuss this at an opportune time."
>
> (Ex.10 2BIW22-115, 10916)

J. G. Smith of Federal referred to the need for Canadian manufacturers to consider the American laid-down prices, when setting Canadian prices. This idea is contained in his memorandum of February 11, 1938:

> "I have G's memo of the 10th instant with attached tabulation of prices and I am quite in accord with his suggestion regarding the method by which these are figured. I believe that if our jobbers prices are in line with the American import that is all we need to take into consideration with regards to our set up.
>
> . . ." (Ex.391,2BIW26-18, 10562)

Documents refer to the circulation in 1936 by one manufacturer of suggested prices for the approval of other manufacturers. In this period most of the mechanical work involved in the preparation of such prices was performed by Northern and when prices were subsequently agreed to by the parties concerned, Northern issued new prices and circulated them in memorandum form to their competitors. On July 30, 1936 for example, K.P. Macpherson of Northern wrote as follows:

> "Attached you will find the proposed new prices on Flexible Cords, made necessary by the appraisals dated July 17th, which are now in effect.
>
> Will you please review these prices and let us know your wishes by return mail."
>
> (Ex.10, 2BIW22-259-1,11072)

Referring to rubber covered wire and cable, C. S. Leary of C. G. E. wrote the following memorandum on August 11, 1936:

"We are in accordance with the suggested resale as outlined in T.A.G.'s memo of the 7th at the same time we would like to see prices made effective immediately if at all possible."

(Ex.14, 2BIW22-334, 11156)

On October 15, 1936 Mr. Macpherson of Northern indicated that certain prices on cord sets were being cancelled because they were not competitive (Ex.13, 2BIW22-323, 11144) and Mr. Leary in a memorandum to other manufacturers' representatives wrote:

"We would like to recommend that a study be made in an effort to have new prices established without delay, . . .

Accordingly, we would appreciate it if the other interested parties would pass their comments along to K.P.M. [Macpherson] in an effort to have this situation adjusted promptly."

(Ex.13, 2BIW22-319, Oct.19, 1936, 11140)

K.P. Macpherson's memorandum of April 6, 1937 indicated some of the products for which prices were prepared by Northern:

"Attached are new prices on non-metallic sheathed cables, code wires, flexible cords, which we propose to put in effect on April 9th.

You will notice that it has been necessary on non-metallic sheathed cables and code wires to take cognisance of import at Vancouver since U. S. manufacturers are selling these items at one price anywhere in the United States."

(Ex.15, 2BIW22-416, 11252)

Price proposals were, at times, discussed at meetings of the manufacturers' representatives. Mr. Macpherson indicated this in a memorandum dated October 8, 1937:

"There will be a meeting of the A.B.C. group, in Montreal, on Wednesday, October 13th, in the fore noon.

It is proposed immediately after this meeting to discuss non-metallic sheathed cable and in the afternoon other types of wires and cables.

We trust you will be able to be present at the latter two meetings."

(Ex.15, 2BIW22-470, 11324)

This memorandum was sent to Messrs. Leary of C.G.E., Smith of Federal, Arnold of Boston, Gass of Canada Wire and Timmons of Phillips.

It appears that zone prices for Non-Metallic Sheathed Cables, discussed at the meeting of October 13, were the subject of agreement since Mr. Macpherson, in a memorandum dated December 1, 1937, announced the introduction of such prices:

"Attached you will please find proposed revised prices and re-arrangement of zones on non-metallic sheathed cable.

This revision was necessary because of some drastic price reductions in the United States and the adoption of a zoning system for this product."

(Ex.15, 2BIW22-514-1, 11369)

American competition frequently made it necessary for Canadian manufacturers to review their prices and keep them in line with price fluctuations in the United States. T. A. Gass of Canada Wire on December 15, 1937 wrote the following memorandum with reference to such competition:

"I enclose herewith comparison of our price list on Rubber Covered Wires and Cables with the new list which became effective in the United States on December 8th.

I have not filled in any proposed prices and would suggest that the prices remain as is, until after the 1st of the year, when, I understand, we will all get together and have an opportunity of discussing these, as well as other matters."

(Ex.348, 2BIW26-2, 10544)

Evidence that the system continued into the following year was supplied by T. A. Gass of Canada Wire who stated that in March of 1938, the manufacturers of building wire had a uniform price list which had been prepared and agreed to. He further stated that the prices were arrived at by exchanging pricing information in a manner similar to that followed today (Evidence, p. 1715). This evidence is supported by numerous documents of which those following are typical.

A new set of prices on radio hook-up wire for manufacturers was sent out by Mr. Gass of Canada Wire for the approval of the other wire and cable companies on May 23, 1938. The prices were enclosed with the following memorandum:

"After considerable study of the Radio Hook-Up Wire prices, we have come to the conclusion that our prices as presently constituted are considerably higher than the Import.

We, therefore, attach hereto, our suggested revisions of Sheets 59.2 and 59.3 covering this material and suggest they be adopted immediately if found satisfactory."

(Ex. 348, 2BIW26-111-1, 10661)

T. A. Lindsay of the Canadian Telephone and Supplies Limited in Winnipeg (Sales organization of Phillips) reported in June of 1938 that the local representatives of the wire and cable manufacturers had met with T. A. Gass of Canada Wire and had made various decisions with respect to zone prices for tonnage materials and other products (Ex. 236, 3PEW12-20, 9137-40). T. W. Brackinreid of Phillips testified that he did not know if it was customary for representatives at branch offices to get together in this way and said: "we have tried to give them a policy to follow". He also indicated that the only agreements and arrangements, of which he had knowledge, were those which were entered into at head office level (Evidence, pp. 812, 813).

The preoccupation with U. S. competition continued in 1938, as shown by a letter dated February 10, 1938, to Messrs. Macpherson, Timmons, Leary, Arnold and Smith, in which Mr. Gass suggested the

following procedure to meet American competition:

". . .

In view of the fact that the price level in the United States is now so low, I would like to suggest that we do not make our list price such as to equal the American laid-down price, but rather that we should have it 5% above the American laid-down price, so that after deducting our discount of 5% from the list, our net cost to Jobbers would equal the American import. This, I believe, would fully take care of the question of imports and be on a better basis for us as manufacturers."

(Ex. 348, 2BIW26-16, 10560)

Quite often Canadian prices were adjusted upwards when the prices for similar products were increased in the U. S. A. (Evidence, pp. 1684-5). On October 4, 1938, P. A. Timmons of Phillips in the following memorandum to Messrs. Gass, Macpherson, Leary and T. W. Brackinreid (Evidence, p. 816) referred to such a situation:

"As you no doubt know, effective September 27th prices on Rubber Covered and Braided Wires were raised in the States and I am attaching herewith a study showing laid down prices as against our present list and jobbers prices.

My thought is that our present Zone No. 1 list should be raised to equal the import prices. In the case of #14 gauge this would mean an increase over our present list of 15¢ per 1,000 ft., not very much you will appreciate, but my thought is that if these prices were increased by small amounts there would not be so much tendency on the part of the trade to overstock."

(Ex.239, 3PEW12-14-2 to 4, 9124-6)

T. W. Brackinreid of Phillips wrote his approval as follows:

"I have a memo of yours of Oct. 4th re Rubber Covered and Braided prices. I am quite in accord with any increases and think that your method of increasing would be much more satisfactory than one large jump, providing that we can keep on moving upward."

(Ex. 239, 3PEW12-14, Oct.5/38, 9123)

C. S. Leary of C. G. E. enclosed some prices with reference to heater cord sets in a letter dated November 9, 1938 in which he said in part:

"Will you please review these at your earliest convenience and advise whether or not they are acceptable to you. In the event that they are acceptable, then indicate the date you would like to see them made effective.

. . ." (Ex. 324, 2BIW26-167-1, 10719)

These prices were apparently revised, because Mr.Leary on November 18, 1938, wrote the following memorandum:

"Attached is a revised price list giving the established prices for the two zones.

After you have had an opportunity of reviewing this, will all parties receiving a copy of this memo advise by November 25th, if they are agreeable to adopting this resale effective November 28th."

(Ex. 324, 2BIW26-178, 10731)

This matter was apparently settled on December 7, 1938, when Mr. Leary wrote regarding heater cord sets as follows:

"Mr. Graham informs me that at an industry meeting yesterday, it was decided to adopt the prices attached to my memo of November 18th and make them effective December 8th.

In view of the replies received, I take it for granted that these prices are acceptable to the parties receiving a copy of this letter, and that you will quote similar prices when called upon to do so."

(Ex. 324, 2BIW26-207, 10761)

Possible sanctions which might be applied unilaterally in the event that the parties to the price agreements did not keep faith with each other are indicated in two memoranda which originated with Mr. Leary:

"Re: Increased Prices

We have rumours from the field that some wire manufacturers have indicated to the trade that wire and cable prices will advance on a specific date, namely, November 17th. We are investigating these rumours and, if found to be correct, we reserve the right to delay putting the increases into effect in order to put us on a comparable basis.

According to our mutual understanding, we have refrained from advising anyone in our organization, either directly or indirectly, re the contemplated advance."

(Ex.324, 2BIW26-171, NOV. 14/39, 10724)

"Re: Increased Prices

Further to our memo of November 14th, we have decided in this instance, after dismissing [sic] this matter with several interested parties to mail our sheets tomorrow, November 17th, as originally agreed.

We still feel, however, that this should be brought up for discussion at the first opportunity."

(Ex.324, 2BIW26-174, November 16/38, 10727)

Late in 1938 and early in 1939 there was an exchange of memoranda by representatives of the wire and cable manufacturers which set out the procedure followed in reaching agreement on price revisions. Evidently T. A. Gass of Canada Wire had issued

proposed new prices for manufacturers on Radio Hook-Up Wires on November 18, 1938 which J. G. Smith of Federal, in a memorandum dated November 23, 1938, indicated were not acceptable to him because some prices should be higher (Ex. 391, 2BIW26-185, 10739). C. S. Leary of C. G. E. wrote he would like to study costs before replying and also stated:

> ". . .
>
> At the same time I assume that whatever advanced price is decided upon, it will not become effective until around the middle of December, when the production for this year will be practically completed."
>
> (Ex.324, 2BIW26-187, Nov. 24/38, 10741)

Subsequently on January 10, 1939 he wrote:

> "Unfortunately, we neglected commenting further, and I now find that the prices submitted are satisfactory to ourselves.
>
> As we feel that any change in price should be made effective at once, I would like to suggest that the parties receiving a copy of this memo pass along their comments to K.P.M. (Macpherson) in order that a decision can be arrived at, either to maintain the present price level, or to adopt a higher schedule, as proposed."
>
> (Ex. 324, 2BIW25-9, 11417)

A further memorandum from Mr. Smith of Federal indicated his approval:

> "The revisions on the above prices suggested by G. (Gass) in his memo of November 19th, will be satisfactory to us, and we would also like to see them go into effect at once."
>
> (Ex.391, 2BIW25-14, 11422, Jan.12/39)

T. A. Gass then wrote as follows, on January 16, 1939:

> "In view of the comments received from those interested, we assume 'Mac' (Macpherson) will have the prices which we sent to him with our letter of November 19th, established immediately."
>
> (Ex.348, 2BIW25-18, 11426)

Continuance into 1939 of the arrangements among manufacturers with respect to the establishment of common prices and other uniform conditions is further indicated by the following memoranda from C. S. Leary in January of 1939:

> "Replying to Pat's (Timmons of Phillips) memo of January 5th, it has been our policy to add the extras to the scheduled prices for wire and cable and then deduct any discounts that may apply.
>
> So far as we are aware, this is the procedure being followed by the other companies. However, if we are incorrect, we will

immediately change our policy.

May I suggest that M [Macpherson] issue a ruling on this point."

(Ex. 324, 2BIW25-24, 11432, Jan.17/39)

"Re: Type SE, style A, Service-entrance Cable.

Acknowledging T's memo of the 18th, we agree that it is desirable to have prices established for 2/8 and 1/10 service-entrance cable.

The price suggested is satisfactory to us and we assume that M will have prices established for all zones."

(Ex. 324, 2BIW25-29, Jan. 20/39, 11437)

With reference to this last memorandum, K. P. Macpherson replied on January 27, 1939, as follows:

"The new price as suggested is agreeable and will be published."

(Ex.15, 2BIW25-45, 11453)

Mr. Timmons of Phillips on February 4, 1939 sent the following letter to T. W. Brackinreid of the same company with reference to the attitude taken by one customer when faced by common action among the suppliers:

"Referring to the present situation in respect to McKinnon Industries Limited, when they were advised that on their requirements of wires for commercial motors they would be compelled to pay the same price as other manufacturers, they immediately said that they would import all their wire requirements.

Mr. Gass made a study of U. S. prices on three sizes and I attach herewith a list showing Mr. Gass' study, which will clearly indicate that this customer cannot import at lower prices than he is now enjoying.

Mr. Gass proposes to visit these people, accompanied by Mr. Greenshields, on Monday next and will advise us the result of his visit."

(Ex.244, 3PEW12-4-2 to 5, 9104-7)

In a memorandum dated February 7, 1939, and circulated to Messrs. Macpherson of Northern, Timmons of Phillips, Leary of C. G. E., Smith of Federal and Arnold of Boston, T. A. Gass of Canada Wire affirmed his belief that the price agreements should be maintained:

"I believe it would be a mistake to introduce any deviation from our price schedule anywhere throughout the West."

(Ex.348, 2BIW25-64, 11472)

Attempts were being made early in 1939 to adjust prices on Type CF Fixture Cords on an agreed basis. Mr. Leary suggested in a memorandum of April 10th that:

". . .

If G. [Gass of Canada Wire] is willing to sell his lacquer-finished product at the cotton braid price, we will be only too willing to co-operate in establishing a similar price for the CF plain brown, provided this meets with the approval of the other companies.

We concur with his suggestion that the selling price of this product can be increased."

(Ex.324, 2BIW25-138, 11549)

J. G. Smith of Federal, with reference to the same matter, said in a memorandum dated April 11, 1939:

"Our costs also indicate that this material could stand a higher price and we agree that the selling price should be increased."

(Ex.391,2BIW25-148, 11559)

In 1939 the manufacturers were anxious to have their resale prices maintained by the jobbers. A memorandum sent out by T. A. Gass of Canada Wire, on May 17, 1939 with reference to an interview with Mr. Wagman of Industrial (Evidence, p. 1659) indicated this:

"I had an interview with our so-called customer whom we discussed last week and advised him that one of the manufacturers had definite proof that he had cut a price to a jobber, which Mr. 'W' stated was not his policy nor had he any intention of allowing prices to be cut.

I stated this was a very definite case of which we had proof and he advised that it must be out West where he promptly admitted his agent, a man by the name of Adams in Vancouver who apparently handles their products, and also solex lamps, had supplied a jobber at an extra discount of 7½%. He promptly produced a copy of a letter he had written to Mr. Adams stating that they would not accept any further business except at the authorized discount.

Mr. 'W' stated that his policy would be to absolutely maintain the prices and I really believe that he is in earnest, so much so, that I discussed with him the advisability of him trying to make community and other jobbers who bought from him maintain the resale. He stated that he had already had this matter up with them and that they had practically told him it was none of his business what they did with the material they purchased from him as long as they paid for it, but he seemed to indicate that there was some hope of the jobber situation straightening out as far as Superior and Community were concerned."

(Ex.348, 2BIW25-193, 11605)

Mr. Gass referred to the maintenance of resale prices in his evidence with reference to Exhibit 360:

"Q. Would you refer to the second last paragraph? Was there in 1938 a price policy of the various manufacturers supplying building wire to the trade whereby the resale prices were maintained?

A. They were never maintained, to the best of my knowledge. They might have tried to but they never were. We tried to maintain prices to the wholesaler. Even before that the wholesaler had purchased this material and they did what they pleased with it."

(Evidence, p. 1715)

As might be expected, Canadian wire and cable manufacturers continued to keep their prices in line with American prices so that the Canadian market would not be flooded by competitive goods from the United States. When price reductions were made in the U. S. and wire and cable was in good supply, Canadian manufacturers generally found it necessary to reduce their prices and the amount of these reductions were agreed upon by the manufacturers. On May 25, 1939 K. P. Macpherson of Northern sent out the following memorandum:

"On May 15th, Code Wire prices in the United States were materially reduced and the price sheets have been given a fairly wide circulation. We, therefore, consider it imperative to put new prices into effect with the least possible delay.

The sheets attached show prices which are about 5% above the import price, which we consider should cover the situation.

We would like to hear from you by return mail and will then notify the date on which we will make these prices effective."

(Ex.15, 2BIW25-201, 11616-19)

That the usual system of negotiation took place on this occasion appears from the documents. On May 26, 1939, C. S. Leary of C. G. E. indicated his approval of the prices with one exception (Ex. 324, 2BIW25-203, 11621) and T. A. Gass of Canada Wire in the following memorandum of the same date also agreed to them:

"Replying to Mac's [Macpherson] memo of the 25th instant, we quite approve of his suggested prices for Code Wire and we have stopped to check same and find the situation exactly as he indicates.

We would, therefore, suggest that these prices be put into effect on receipt of Mac's memo."

(Ex.348,2BIW25-206,11624)

Documentary evidence showing that the alleged agreements were continued in 1940 is also found. C. S. Leary of C.G.E. expressed his agreement with prices suggested for Aircraft Cables in a memorandum dated July 22, of that year:

"In reply to G's [Gass of Canada Wire] memo of July 18th, we find the prices submitted agreeable to us, likewise the proposed basis for quoting concerns other than Federal Government Department and recognized Aircraft Manufacturers.

We recognize the amount of work involved in setting up these prices and wish to express to G our appreciation to the members of his staff that compiled this list."

(Ex.324, 2BIW27-126,10031)

Another example is found in the price revisions which were under way on non-metallic sheathed cable in September of 1940. J. G. Smith of Federal on September 21, 1940 suggested that the question of short lengths be considered at the same time:

> "Since my return, I have been considering the prices that will be issued on non-metallic sheathed cable and the question has come to my mind regarding a special discount that is offered on short lengths.
>
> I understood that this discount was discontinued but I believe it is still in vogue and I think the matter of short lengths and discounts on short coils should be cleared up at the same time as new prices are established and I believe M. should take this into consideration and have it made perfectly clear to all concerned."
>
> (Ex.391, 2BIW27-157,10062)

Later in January 1941 Mr. Smith wrote that there was a considerable discrepancy between the American laid-down price and the Canadian price and suggested that Canadian prices be increased:

> "Attached hereto is a tabulation showing the present laid down costs of Non-metallic Sheathed Cable from U.S.A. together with the net amount received from Canadian jobbers in Zone 1. The discrepancy between these two figures is unnecessarily wide. Taking into consideration increasing costs on raw materials at present effective, plus others which we are faced with in the immediate future, our selling prices should unquestionably be stepped up considerably at once.
>
> Our idea of the amount of this increase is shown on the right hand column and we would like to hear from you as to whether this cannot be put into effect very quickly."
>
> (Ex.391, 2BIW27-259-1, Jan. 28/41, 10169)

Early in 1941 Northern prepared certain price studies and submitted proposed prices to the other manufacturers for approval. C. S. Leary of C.G.E. on February 18, 1941, with reference to price studies circulated by Mr. Macpherson on rubber-insulated and braided wire and cable said:

> "Acknowleding M's memo of the 14th, to which was attached a price study re performance grade and heat-resisting grade rubber-insulated and braided, we find that the proposed prices are quite acceptable to us.
>
> It is our understanding that no advance information will be given out to the trade re this proposed increase."
>
> (Ex.324, 2BIW27-279, 10198)

T. A. Gass of Canada Wire in connection with this work made the following comments on suggested zone prices for "SJ" Light Cab Tire in a memorandum dated May 17, 1941:

"Responding to 'M's' [Macpherson's] memo of the 16th instant, we are quite in agreement with the prices suggested."

(Ex.348, 2BIW27-351, 10285)

Again on May 27, 1941 C. S.Leary of C.G.E. wrote:

"Re: Type CF Fixture Cord.

In reply to M's study of May 26th, the prices as suggested are satisfactory to us and we recommend their adoption."

(Ex.324, 2BIW27-376, 10313)

In three more memoranda, Mr. Gass indicated his approval of suggested prices circulated by other manufacturers:

"Re: 'POSJ' Cord Sets

We are quite in agreement with the prices indicated in 'L's' [Leary's] memo of May 22nd."

(Ex.348, 2BIW27-374, May 27, 1941, 10311)

"Replying to Mac's memo of the 26th instant the suggested prices on 'CF' are on a much better basis, and are satisfactory to us."

(Ex.348, 2BIW27-380, May 29, 1941, 10317)

"Re: Radio Hook-Up Wire

Sheets 59.2 and 59.3 - Manufacturers' Prices.

Responding to M's memo of June 24th we are in favour of the adoption of the prices suggested."

(Ex.348, 2BIW27-411, June 26, 1941, 10355)

The system of exchanging price information for the purpose of reaching agreement on prices is illustrated by correspondence later in 1941. On August 20, 1941 C. S.Leary of C.G.E. sent out the following memorandum:

"Re: Rubber-Insulated Service Wires
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In regard to M's [Macpherson's] memo of August 16th, and G's [Gass] memo of August 19th, as to the extras for jute fillers, we are in agreement with the increases suggested."

(Ex.324, 2BIW27-580, 10535)

T. A. Gass of Canada Wire sent the following letter to T. J. Bell of Federal on August 29, 1941:

"I have yours of the 28th instant enclosing proposed changes in Extras and note you suggest these to be put into effect September 1st.

I do not believe it is possible to put them into effect at that date, as naturally, you want to study same and would also want to discuss them with Mr. Timmons, which we will endeavour to do the first of next week, and then get in touch with you."

(Ex.392, CWC18-10, 2592)

With reference to these extras Mr. Bell said in his evidence:

"A. . . . There are three or four lines that we manufacture on which we have a basic price which refers to the base price of copper and then we have extras which take into account our manufacturing costs which are in addition to the basic price of copper. The extras normally remain constant over a three or four year period, but the base changes with the market price of copper, so on these lines of business in the ultimate price we have two things, one, the basic price of copper and, two, the extras."

(Evidence, p. 1900)

On February 15, 1943, K. P. Macpherson of Northern submitted a list of suggested prices on quad cable to the other manufacturers and asked for their immediate comments (Ex.28, 2BIW15-3, 9233). Mr. Macpherson agreed that this was an instance where he had sought the views of his competitors before putting the prices into effect (Evidence, pp.93-4). When J. H. Fitzgerald of Phillips was asked if these prices were subsequently adopted, he said:

"I would not like to make that statement. Either that price was or some subsequent price."

(Evidence, p. 632)

C.G.E., as previously indicated, prepared cost studies and issued some prices on wire and cable products for which patents were held by C. G. E. On October 23, 1945 F. W. Barnhouse of C. G. E. sent out to the other manufacturers some corrections to the price sheets prepared by C.G.E. on Type SN-600 volt cable (Ex.261, and 29, CCF 92, 1986).

This particular type of wire, SN Type, had been one of the subjects on the agenda of a meeting of September 11, 1945. This would indicate that the manufacturers had first discussed the price and then Mr. Barnhouse had prepared his studies or suggested prices on the basis of agreement reached at this meeting (Ex.93, CCF 88, 1978).

K. P. Macpherson said that Northern received a copy of Exhibit 261 and he identified the "B" as Mr. Barnhouse's initial (Evidence, pp. 95-6). In his evidence Mr. Macpherson stated that the corrections indicated in the price sheets would be incorporated in the price structure of Northern:

"Q. I take it that the memo indicates that there are certain corrections to be made in schedule sheets which had been

sent out by the Canadian General Electric. Is my understanding correct?

A. I think that is correct. That is what I read into it.

Q. Your company was in the habit of receiving schedule sheets from Canadian General Electric; is that correct?

A. On some things.

Q. And these Nos. 180 to 183 would indicate some particular type of product on which they would send out price sheets. Is that correct?

A. That is correct.

Q. When that document was received at Northern Electric, who would make the changes in your office?

A. Those changes would be made by the price manager.

Q. Mr. Clish?

A. Mr. Clish. That was, I think, the material we were making under licence at that time."

(Evidence, pp. 96-7)

In June and July of 1946 interested wire and cable manufacturers were endeavouring to reach an agreement on a price set-up for pre-assembled aerial cable. Pre-assembled aerial cable was a special type of material for which price sheets or books were not available prior to this time. Evidently increasing demand for this product had made it desirable to develop a common price structure which would facilitate quotations and the maintenance of uniform prices by those interested in making this cable. The prices established were not made available to customers but were generally retained at the head office and used when quotations were requested. Subsequently the preparation of price studies and proposed prices for this material became the responsibility of Canada Wire. Various proposals were put forward and memoranda exchanged before prices and specifications satisfactory to the parties concerned were worked out.

On June 14, 1946 T. A. Gass of Canada Wire sent the following memorandum to Messrs. Macpherson, Timmons and Barnhouse re self supporting aerial cable (Evidence, pp. 1554-5).

"We attach hereto proposed prices on the above type of Cable for your comments."

(Ex.30, 1 NE2-6-1,4272-4)

Another document listing specifications and prices for self-supporting aerial cable was received by Northern on July 10, 1946. This document originated with Mr. Barnhouse of C.G.E. and represented further proposals for a price-set-up on pre-assembled aerial cable. A footnote indicated that "Short Length Additions per G's [Gass] memo on June 14th will Apply" (Ex.34, 1NE 2-5, 4270-1). K. P. Macpherson said that the document was part of the effort of the manufacturers to arrive at a fair price for this product acceptable to all (Evidence, pp. 104-5).

C. E. Woolgar of Northern endeavoured to coordinate the various proposals put forward and wrote as follows on July 15, 1946:

> "Re G's of June 14 & B's of July 8th, there are too many variables in our several designs to allow ready agreement, and we suggest the following:"

Mr. Woolgar then outlined his suggestions re self-supporting aerial cable which included:

> "(f) Agree on prices for complete cable, less the selling price for messenger. To the agreed price of any cable, each can then add the standard list price of the type of messenger he considers appropriate. Quoted prices for complete cable would then differ by the variation in price between the types of messenger used."
>
> (Ex.31 & 332, CWC 46-2,2716)

In reply to Mr. Woolgar's memorandum, T. A. Gass of Canada Wire on July 18, 1946 wrote that his views coincided with those of Mr. Woolgar and that:

> "It will be understood in the meantime that we could use agreed-on prices for various types of Messenger to be added to the price arrived at for the complete cable less Messenger."
>
> (Ex.32 & 333, CWC 46-3, 2717)

A memorandum from Mr. Woolgar to T. A. Gass, P. A. Timmons and F. W. Barnhouse (Evidence, p. 103) on September 6, 1946 said that he was preparing further prices on pre-assembled aerial cable for their consideration:

> "As requested, we are preparing a complete list of suggested prices for pre-assembled Aerial Cable for 2,300 volts and for 5,000 volts, excluding the messenger, and shall issue for comment at the earliest possible moment."
>
> (Ex.33, 1 NE 2-3, 4267-8)

He circulated these prices to the same people on September 19, 1946 requesting their comments (Ex. 35, 1 NE 2-2, 4263-6, Evidence, p.119), and on September 25, 1946 suggested some corrections and indicated that he had received a reply to his memorandum of September 19, 1946 from P. A. Timmons of Phillips. Other negotiations in this connection are not found in the documentary evidence. T. A. Gass of Canada Wire, however, testified as follows in respect of Exhibit 31:

> "Q. Do you know whether sub-paragraph (f) in that paragraph was adopted?
>
> A. It was. . . ." (Evidence, pp. 1697-8)

During this period when errors and discrepancies were found in the price structure or interpretations were required, nepresentatives of the wire and cable manufacturers referred the matter to Mr. Macpherson of Northern. Mr.Pryce of Canada Wire on September 27, 1946, sent such a memorandum to Messrs. Macpherson, Timmons and Barnhouse indicating a discrepancy in the price for neoprene jacketted cable (Ex. 37 and 381, CWC 34-19, 2671; Evidence, pp.122 and 1822-3).

This was one of the products for which price studies and proposed prices were prepared by Northern. K. P. Macpherson was questioned about this in the following exchange:

"Q. In the memorandum the last sentence says:

'Would "M" please advise the correct price to apply.'

Would you explain what the implication is?

A. The implication is there that there appears to be a typographical error in the price.

Q. And this would be one of the prices which was published by Northern Electric; is that correct?

A. That would be the conclusion.

Q. On neoprene jacketed cable; was that one of the types of wire and cable which Northern Electric was issuing the price list on?

A. At that time, yes." (Evidence, pp. 122-3)

On October 16, 1946 Northern issued corrections to prices on Radio Wires and Radio Hook-Up Wires (Ex.38,CWC 34-12, 2664) in which reference was made to an "M" Series. Mr. Macpherson identified the document and said:

"A. That would have been a price sheet issued by Northern Electric Company, I think, not necessarily originated by it -- issued by it."

(Evidence, p.124)

Mr. Macpherson thought that the "M" series referred to would be price sheets which Northern was sending out to the other manufacturers. When such sheets were received by other manufacturers, they would adjust their prices accordingly (Evidence, p. 633).

A group of similar memoranda, including the original of Exhibit 38, were filed as Exhibit 357. These memoranda also originated with Northern and contained corrections to price lists (Ex.357; CWC34-13, 2665, October 4, 1946; CWC34-11,2663, October 4, 1946; CWC 34-12, 2664, October 16, 1946; CWC34-9, 2661, no date; CWC34-7, 2659, November 22, 1946; CWC 34-8, 2660, no date; Evidence, pp. 1698-9). Two of them referred to an "M" series of price sheets.

Mr. Pryce was asked about the documents referred to as "M" series price sheets:

"A. They would appear to represent changes in prices on various types of wire.

Q. Have some of these documents been prepared by your office, or are you able to say?

A. I am able to say that none were prepared by our office.

Q. What is meant by the 'M Series' which is in the document coded CWC34-17?

A. I would say the Northern Electric Series.

Q. Would that 'M Series' only apply to the prices actually prepared by the Northern Electric and circulated by them?

A. Yes.

Q. Then was there also a 'B Series'?

A. I believe there was.

Q. Would these be prices prepared by the Canadian General Electric, or what is meant by the 'B Series'?

A. I would say they are prices prepared by the General Electric.

Q. Do these documents in Exhibit No. 357 represent the type of memorandum which was exchanged between competitors with regard to advising changes in prices or price lists; is this the usual type of memorandum to be exchanged?

A. Yes, it is typical." (Evidence, pp. 1854-5)

G. W. Arnold of Boston was shown a price sheet dated January 28, 1947 for Weatherproof Wire, Annunciator Wire and Bare Copper Aerial Wire (Ex. 290, 2BIW17-2, 9245). He said that his company manufactured Weatherproof Wire and that these prices were probably received from competitors (Evidence, p. 1267).

Price changes and corrections were sent out by C. G. E. on February 10 and 11, 1947 (Ex. 39 and 291, TWC11-36, 622; Ex.40 and 306, TWC11-33, 615; Evidence, pp. 125, 635-6, 888-9, 988, 1267-8, 1386). The memoranda were signed "B" and Mr. Barnhouse identified this initial as his own and indicated that the subject matter referred to prices on Type T Cable formerly known as SN Cable (Evidence, pp. 1561-2).

In his evidence Mr. Gass of Canada Wire gave an explanation for the preparation of these prices by C.G.E.:

"Q. Was this illustrative of the type of information received from other manufacturers?

A. Type 'T' wire is a patented wire owned by the Canadian General Electric. We were their licensees.

Q. As such did ycu sell at the prices under the licence agreement?

A. We did so.

Q. That is what these memoranda were indicating, changes to the prices as under the licence agreement?

A. Yes." (Evidence, pp. 1702-3)

In April 1947 the documents indicate that new prices were agreed to by manufacturers of wire and cable on Type "SJ" Light Cord Sets (Evidence, pp. 126-8). In this instance T. A. Gass of

Canada Wire prepared suggested prices and sent them to the other manufacturers for their consideration and approval. In this connection J. H. Fitzgerald of Phillips circulated the following reply on April 14, 1947:

> "With reference to G's memo of April 11th regarding the above subject, we would advise that these prices are acceptable to us."
>
> (Ex.41, 2BIW18-1, 9252)

F. W. Barnhouse of C. G. E. replied on April 15, 1947:

> "The prices and additions contained in G's memo of April 11th are acceptable to us. We therefore, propose to put these prices into effect on quotations and orders immediately."
>
> (Ex. 42, 2BIW18-2, 9253)

In accordance with the usual system these prices were subsequently issued by Northern to the other manufacturers (Evidence, pp. 636, 1563, 126-9).

Mr. Fitzgerald in a letter on April 16, 1947 to his President, T. W. Brackinreid, outlined how prices, subject during the war years to the regulations of the Wartime Prices and Trade Board, were de-controlled. He stated that controls were removed on 70 per cent (by value) of the wire and cable products on July 2, 1946. Other decontrol measures followed and by April 1947 the last items were removed from controls (Ex. 162, PEW 4-7, 2937-8, Evidence, pp. 636-7).

Suggested price changes were frequently put forward by representatives of manufacturers other than Northern during the period after decontrol and prior to 1950, although Northern was preparing most of the price studies and working out a considerable number of the prices. For example, on May 20, 1947, Mr. Fitzgerald of Phillips wrote a memorandum to the Industry proposing that Price Sheet "M" Series 8.3.3 be brought up-to-date and said:

> ". . .
>
> We believe that in order to bring the price sheet up-to-date the description should be changed as follows and new prices worked out.
>
> . . ." (Ex.43, 2BIW17-8, 9251, May 20, 1947)

The reply of F. W. Barnhouse of C. G. E., dated May 22, 1947, is on record as follows:

> "In reply to F's memo of May 20th suggesting that this sheet be brought up to date in accordance with C.N.R. specifications and the Canadian Car and Foundry Spec., we have the following comments.
>
> Some time ago we had information from the Canadian Car and Foundry Co. that they would not be revising their specification due to the fact that the majority of the Railway Coaches they manufacture are for the C. N. R. and thus cables would be to the C. N. R. specification.

The only C.N.R. specification we have on files is known as 'Maintenance Sheet #231-H.' We would appreciate being advised if other parties have other C.N.R. specifications on this subject.

We have no objection to having material sheet 8.3.3 revised to cover the latest specification."

(Ex.47, 2BIW17-3, 9246)

Other documents bear on the practice of one manufacturer preparing proposed prices and submitting them to the other manufacturers for comments. In this connection, Mr. Gass of Canada Wire on May 21, 1947 circulated the following memorandum:

"We are quite agreeable to the prices suggested in 'B's' [Barnhouse, C. G. E.] memo of May 19th, and would like to see a regular scheduled price sheet issued by 'M's' Office to cover these items."

(Ex. 45, 2BIW17-5, 9248)

A similar memorandum was sent out by Canada Wire to others in the industry with reference to flexible tinned strands for insulated cables on May 21, 1947:

"We note in revising the subject price sheets that 'M' has deleted a number of the extras that were formerly listed.

As we frequently receive inquiries and orders for strandings not listed on the revised sheets, we should like to suggest that new sheets be issued to include the extras for strandings formerly shown."

(Ex. 46, 2BIW17-4, 9247)

A suggested set-up for weatherproof wire to jobbers was sent to the other wire and cable manufacturers for their approval on June 3, 1947 by Mr. Macpherson of Northern (Ex. 50, 2BIW5-1-11 to 12, 9185-6). This was one of the proposals which Mr. Gass had referred to his General Manager in a memorandum in October 1944 concerning a post-war policy on rubber covered wires and cable and flexible cords (Ex. 362, CWC16-2, 2552-4, October 6, 1944). Mr. Macpherson in evidence explained what he was suggesting in this memorandum:

"Q. Would you explain what the attached sheet represents or indicates or its significance?

A. The attached sheet was footage price on weatherproof wire.

Q. I note from the memorandum that you state:

'The attached is suggested set-up for jobbers' 10 per cent discount.'

The second sentence is:

'Do you concur'?

A. The reason for this was that all of our weatherproof wire was sold by 100 pounds. The jobbing trade, the distributing trade had asked us to put it up in coils for them, 250,

500, and 1,000 foot coils, so that they could sell it by the coil and would not have to do the cutting and measuring, so that they could sell the customer what he required. This was merely interpreting the existing price at that time into length quantities and adding 10 per cent, giving the jobbers a 10 per cent discount.

Q. Having prepared this sheet, you sent it out to the other manufacturers and asked if they concurred with the proposed price?

A. That is correct.

Q. Do you know whether they did concur?

A. I don't know whether some of the figures were changed, but eventually they were published.

Q. Were the prices published the same for all the manufacturers?

A. That is correct." (Evidence, pp. 140-1)

T. A. Gass of Canada Wire outlined in his evidence why the wire and cable manufacturers made weatherproof wire available to the jobbing trade at this time:

"Q. Do you remember around this date whether there were new jobber discounts or was this a jobber discount only with respect to this item?

A. Weatherproof is used largely by the Utilities and seldom used elsewhere. With the advent of farm electrification the demand arose for weatherproof wire for running from the nearest pole line into the farm buildings. That conductor is usually weatherproof wire. As such, weatherproof wire should be available for purchase by electrical contractors throughout the Dominion of Canada who would be doing these farm installations.

The logical channel for them to purchase through would be their electrical wholesaler. On or about this time it was decided to set up a list price per 1,000 feet for this product which had formerly only been sold on a basis of price per pound. This list price per 1,000 feet included a discount of 10% to the electrical jobber for warehousing and handling this product. Would that fully answer the question, Mr. Hunter?

Q. I think it does. This was something that the industry adopted?

A. That is correct.

Q. Including the 10% figure?

A. That is correct." (Evidence, pp. 1703-4)

This question of weatherproof wire was included in the agenda of a meeting held on July 9, 1947 under Item 5 "Weatherproof

Wire - pounds versus feet" (Ex. 97, 2BIW5-1-7; 5-1-6, 5-1-9, 9180-1, 9183; Evidence, pp. 247 and 963), and the subject was evidently discussed by the manufacturers and new prices agreed to on a footage basis.

Mr. Arnold of Boston prepared prices for the industry on elevator control and annunciator cables and with the following letter to K. P. Macpherson of Northern on June 4, 1947 enclosed new prices for this product:

> "I have been sick since I saw you and this accounts for the delay. I'm enclosing suggested List Prices on Elevator Control and Annunciator Cables. These prices less 7.41 and 5% are our prices to Otis and they are almost the same as the prices to Otis Elevator by the B.I.W. at Boston.
>
> I would suggest that the short length additions be left as they are but I would except Elevator Manufacturing Companies, and for them, use these prices for 500-ft. and over with 20% addition for lengths less than 500-ft. or some such modification.
>
> Could we have these prices effective June 15th?"
>
> (Ex. 48, 2BIW5-1, 9175-9)

Another copy of the above letter, in Mr. Arnold's handwriting, was located in the files of Boston (Ex. 292, 2BIW17-1, 9244).

K. P. Macpherson of Northern said that he had received the price information in Exhibit 48 but said that Northern did not manufacture this type of cable at that time and the information was only sent to them so they could issue the prices to the other manufacturers (Evidence, pp. 136-138).

In a memorandum to other manufacturers dated June 30, 1947 F. W. Barnhouse of C. G. E. indicated that he was preparing some new prices on certain wires and cables:

> "<u>Subject: B Series Schedule Sheet</u>
>
> We note that M has issued new 'M' series schedule sheets making allowance for recent copper and cotton increases, and we are at present working out studies on all items on the following:
>
> Asbestos Wires & Cables, Fixture Wires and Stove Wires.
>
> In regard to Flamenol Wire & Cable, we are making a study but cannot complete it until new prices on type R wire and cable are available. When this information is issued, we will also make allowances for the new stranding additions as shown in sheet #8.1.3, 8.1.4 and 8.1.4.1.
>
> In regard to Formex Magnet Wire, we do not contemplate any change as the allowance for the copper increase has already been made in the base price."
>
> (Ex. 49, 2BIW5-1-10, 9184)

Mr. Barnhouse identified the "B" Series of prices as those prepared by C. G. E. and the "M" Series as prices emanating from Northern (Evidence, pp. 1566-7).[1] Type "R" wire was on the agenda for the meeting of July 9, 1947 and new prices were probably agreed to at this time (Ex. 97, 2BIW5-1-6, 9180). On the agenda for the same meeting there were also non-metallic sheathed cables, armoured cables and armoured lead cables.[2]

Mr. Arnold identified a document referring to standard cab tire cables (Ex. 293, 2BIW11-3, 9205) which had been issued at a meeting of the manufacturers held at Montebello on September 27, 1947. He said the prices had been agreed to by the manufacturers and were to be made effective on October 15, 1947 (Evidence, pp. 1285-7).

On November 27, 1947, W. R. Greenshields of Triangle wrote to the president of the company and told him that there had been a conference at the Royal York Hotel at which the Geneva Trade Agreement had been discussed. Mr. Greenshields went on to discuss the effect of lower tariffs and American prices on the fixing of prices in Canada by the wire and cable manufacturers:

> ". . . As you are well aware, our prices depend to a very large extent on prices prevailing in the United States, and as a result of this 7½% protection being taken away, it is bound to have an effect on our prices in Canada, particularly in the smaller sizes. Each firm has agreed to see just what effect this has according to our costs and distribution against imports from the U.S., and I would appreciate your sending me two copies of your latest price sheets with discounts so that it will enable Jack and myself to study these and make a report in two weeks, at which time we expect to have a further Meeting and decide just what items need revising.
>
> It does mean this, Jack, that on all sizes there will have to be reductions as some of our Canadian jobbers and contractors have, due to a scarcity of certain items, being importing from the States irrespective of what it has cost them, but we know that this condition will not continue forever and we must all agree to lower certain items where we find it necessary under this new tariff arrangement.
>
> So if you will kindly forward your Price Sheets just as early as possible, it will be very much appreciated."
>
> (Ex. 320, TWC7, 546)

On December 15 and 16, 1947, respectively, Mr. Gass of Canada Wire sent out two groups of price sheets on magnet wire to Messrs. Macpherson of Northern, Fitzgerald of Phillips, Barnhouse of C. G. E., and Smith of Federal (Evidence, pp. 1704-6). It would appear that price studies were under way generally in the industry at this time. Mr. Gass wrote as follows with respect to these studies:

---

1. On two of the products mentioned in Mr. Barnhouse's memorandum, type "R" and "T" wire, new uniform increased prices were adopted by all interested manufacturers on or shortly after July 15, 1947.
2. New prices for these wires and cables were introduced around July 15, 1947 by all manufacturers.

". . .

My suggestion is that the present extras for Double and Tinned Enamel should be left as they are.

I am making further price studies on Plain Silk and Silk Enamel but believe the general opinion is that there should be no change in these items.

As quickly as they can be prepared I will forward similar data on the Round and Rectangular Paper Wrapped Wire.

I am attaching hereto, a sheet indicating the method of calculating the base price which would indicate a new base price of 37¢ per Pound.

I assume that unless anyone objects to these suggestions that Mac will issue new sheets along the lines indicated and with the base price indicated, both becoming effective at the same time.

All of my price studies are based on special list prices and assume Mac will add the usual extra to arrive at trade prices.

It would also appear that B has not forwarded studies on Single and Double Glass Formex in types 'H' and 'HF' nor on Formex Cotton, all of which I assume will follow in due course."

(Ex. 51 & 334, CWC49-2, 2818-32)

"In connection with the Silicone Finish Single Glass and Double Glass Manget Wire, I note that Fitz had already calculated these but the extras he has used for #8 and smaller are considerably higher than those that I have used which are the extras of the Anaconda Wire & Cable Company, of New York, and I think may be taken as competitive.

I am forwarding these sheets as they have been finished in case you might be working on Silicone extras and believe that you should have a comparison of the Anaconda extras with those used by Fitz.

My price studies are based on special list extras and assume you have the usual extra to arrive at trade prices.

Other studies will be forwarded as quickly as completed."

(Ex. 52 & 335, CWC49-1, 2799-808)

The evidence indicates that new prices and new distributive arrangements were introduced early in 1948. They had been discussed and agreed to by the manufacturers prior to being made effective and in some cases where the interpretations of various arrangements were in doubt, further discussions by the manufacturers took place to ensure complete uniformity. The new prices and the manner in which they should be interpreted were discussed in an exchange of letters between the branches and head office of Automatic in February 1948 with reference to the pricing of weatherproof (Ex. 194; EAE3-2-3,

4546, February 6, 1948; EAE1-24, 4544, February 6, 1948; EAE3-2-4, 4547, February 20, 1948; EAE3-2, 4548, February 24, 1948). Speaking of this T. A. Lindsay of Automatic said:

"Q. The subject matter of these memoranda, I take it, is weatherproof wire prices; is that correct?

A. That is right.

Q. If you would refer to the document coded EAE3-2-3, the first paragraph states:

'At the suggestion of the Northern Electric Company a meeting was held today of ourselves, C.G.E., Canada Wire & Cable Company and Northern Electric Company to discuss the matter of the pricing of the above type of weatherproof wire based on the new requirements that for other FOB destination points than Toronto, Montreal and Hamilton that Map Rate Freights be added after the discount is applied.'

Can you identify the origin of this memorandum; who is referred to when it refers to 'ourselves'?

A. That would be your Winnipeg office.

Q. This is a letter from our Winnipeg office to your head office?

A. That is correct.

Q. Was it the usual practice for representatives of your company to get in contact with representatives of the other manufacturers at points such as Winnipeg to discuss uniform pricing of a particular type of product?

A. Not usually.

Q. What was the occasion for this meeting then?

A. I would say there was a little confusion in pricing.

Q. Do you mean they were not all coming out with the same answer?

A. I would say so.

Q. The object of the price lists and the price policies of the various manufacturers was to so arrange their price sheets and their price folders that they would come out with the same answer; is that correct?

A. The prices would be competitive.

Q. What do you mean by 'competitive'?

A. They would be the same.

Q. I take it that document EAE1-24 is a reply to this previous document. I see the date is the same. It has to do with the same subject matter?

A. I think it is a clarification of our pricing of weatherproof wire.

Q. Was this a change which had been made at this time with regard to the pricing of weatherproof wire.

A. Yes.

Q. It had been made by all the manufacturers?

A. Yes.

Q. There was a little confusion in putting this change into effect?

A. I believe that is correct.

Q. And this document EAE1-24 is your instructions to your branch office how to price it?

A. Yes.

Q. These instructions as set out in this document EAE1-24, who prepared these instructions? I take it it was sent out by Mr. S. C. Moore to say that this is the system of pricing that had been agreed upon by the manufacturers?

A. I believe that is correct.

Q. And this was dated in 1948. Would that be at the time when you were attending meetings?

A. Yes.

Q. Do you recall this subject having been discussed at a meeting?

A. Yes.

Q. Do you recall an agreement being arrived at?

A. Yes.

Q. Was it agreed that the manufacturers would send out instructions to their branch offices to put these new prices into effect?

A. Yes, new prices would be issued.

Q. That was agreed upon?

A. Yes.

Q. Can you recall was that new system of pricing only applicable to weatherproof wire or was there a general revision of prices in February, 1948?

A. No, the purpose was to provide the electrical wholesaler with a discount of 10% on that wire.

Q. Do you recall if there had been a general revision of prices in 1948 as well?

A. I don't recall any.

Q. I would refer you to document coded EAE3-2-4. That appears to come from Mr. Wild. Was he a representative of your company at Edmonton?

A. Yes.

Q. The next memorandum refers to a new price card of Canada Wire. Do you recall whether a change was made in the price card to follow the Canada Wire system, or did you follow the system as outlined in the document we have just referred to, EAE1-24?

A. I believe we changed to follow the outline given in the letter of February 6th.

Q. In any case, I take it, no matter what system you used you would come out with the same answer?

A. For some months following the change in prices, different prices resulted in weatherproof wire through various interpretations of instructions.

Q. The intent was that everyone would have the same price but use this different method; that is, you were changing the method?

A. That is right.

Q. But the intent was that everyone would come out to the same price?

A. That is right." (Evidence, pp. 722-6)

One of the products adjusted at this time was armoured cable (AC) and armoured-lead cable (ACL). These cables appeared on the agenda of the meeting held on February 26, 1948 (Ex.99 ZBIW11-8, 9212).[1] Mr. Lumbers of Canada Wire was asked if he knew whether his branch or district offices had held meetings with representatives of other wire and cable manufacturers:

"A. I know of an instance that they have. He is not supposed to but I know it has happened. He is not authorized to do so.

Q. I take it then the prices for wire and cable prices for your company are set at head office?

A. Yes.

---

1. Uniform price increases were put into effect around March 15, 1948 by all companies manufacturing the product.

Q. Any meetings between manufacturers with regard to prices that are authorized by your company are those held at head office?

A. Those are the only ones that are authorized."

(Evidence, p. 1785)

A. L. Brown of Northern referred to this general revision of prices and distribution in a letter to District Managers and other personnel on September 20, 1948:

"You will recall that effective on or about February 1st last new resale policies were set up with respect to wire and cable products, with particular emphasis on a new policy with respect to building wires and other products which are known as Wholesaler's products.

New prices were issued and a Wholesaler's discount of fifteen per cent (15%) was set up on certain specified types of products and, at that time, an inherent part of our policy expressed the fact that competition could be met within the 15%.

. . ." (Ex. 57, NE 113, 1080-2)

K. P. Macpherson testified that Mr. Brown's letter correctly set out the situation as it existed at that time (Evidence, p. 154).

In August 1948, Mr. Gass of Canada Wire sent out extras prepared by his company for magnet wire based directly on similar American extras. At the same time extras on Formel, which was manufactured under licence from C. G. E., were also prepared. The proposed extras were circulated to Messrs. Macpherson of Northern, Fitzgerald of Phillips, Smith of Federal and Barnhouse of C. G. E. with the following memorandum dated August 4, 1948:

"I have carefully compared the various Extras from American companies and find that generally speaking they are all exactly the same after the recent increases in the States.

I have, therefore, prepared a tabulation which I am attaching hereto, showing Suggested New Extras that we would like to see adopted immediately and to become effective on Monday next, August 9th.

I have also, for convenience, tabulated the Formel extras and I hope that the licensor will agree to those suggested extras.

Further details of Rectangular, etc. will follow as fast as prepared.

You will notice I have used the U.S. Extra multiplied by 125 which takes care of the 5% discount on maximum quantities in the United States, 20% duty, 8% sales tax, to give the special list of extras that we suggest should be adopted for Canada with the usual proportion of mark-up which we assume Mac will look after for the regular list." (Ex.55 & 336,CWC 48-18, 2750-64)

Mr. Gass was asked to explain what was meant by the term extras and the pricing arrangements which existed with respect to them:

"A. This has reference to magnet wire which is made in a range of sizes from No. 6 which has a diameter of .162 inches down to No. 40 which is about the thickness of your hair if it is not too thick. The cost of producing the various sizes varies, of course, and the extras apply as a selling price over a base price, the base price being regulated by the price of copper which constitutes 99% of the raw material in the product. As copper moved up and down the base price goes up and down. The extras would remain constant unless there is a heavy change in labour rates or cost of enamel.

Q. In this case, I take it that the cost of extras in the United States had increased?

A. Yes.

Q. And you were reflecting a similar increase in Canadian extras?

A. Yes." (Evidence, pp. 1706-7)

Mr. Gass said that he thought the extras were subsequently taken into use by the Canadian manufacturers (Evidence, pp. 1706-8).

J. H. Fitzgerald of Phillips thought that the extras were subsequently adopted. He was asked about the relationship of such extras to similar prices in the United States:

"Q. You said you made a study of the U.S. extras with a view to deciding as to whether you would increase your prices or not, and my question is, in what way would these increases in U.S. extras affect the cost or selling price of wire and cable manufactured in Canada?

A. It doesn't but I would say we used these figures as a guide to the maximum price that could be charged.

Q. If your Canadian price is too high, your American competition will come in?

A. That is right." (Evidence, pp. 640-2)

These extras were added to the magnet wire base to arrive at a price for certain sizes of magnet wire. Mr. Barnhouse of C.G.E. thought that it was quite in order to adjust Canadian extras on the basis of increases in the United States extras because he felt that the conditions which brought about the changes in the American extras would apply to the Canadian industry as well (Evidence, pp. 1569-72).

T. A. Gass of Canada Wire had proposed a further group of extras with respect to this product in the following memorandum, dated August 12, 1948:

"Attached, are new proposed prices for Rectangular Magnet Wires.

These are based on current U.S. Extras multiplied by 1 2 5."

(Ex.56, CWC48-6, 2736-40, Ex. 337, 2FED1-1-22 to 26, 14140-43)

One copy of this memorandum was found in the files of Canada Wire, with no initial on the bottom, and another copy at Federal with the initial "G" appended in ink. It was identified by Mr. Gass at the hearings (Evidence, p. 1709).

The agenda for the meeting of August 19, 1948 included reference to magnet wire and a number of other products including non-metallic sheathed cable, Type R, AC and ACL and Type T wire (Ex. 99, 2BIW11-12, 9216; Evidence, pp. 250-1).[1]

There were occasions when discrepancies in prices appeared. When this happened it necessitated checking the price with the manufacturer responsible for the preparation of the particular pricing information. Such a situation arose on September 13, 1948 when T. A. Lindsay of Automatic wrote J. H. Fitzgerald of Phillips indicating that W. R. Greenshields of Triangle had drawn to his attention what appeared to be a discrepancy in the price for Type AC Cable. Mr. Greenshields had asked that the price be drawn to the attention of those concerned. Mr. Fitzgerald subsequently advised Mr. Lindsay on September 16, 1948 that he had checked the price (Ex. 163, AEL6-9, 205 and AEL6-8, 207) with K. P. Macpherson of Northern who at this time was preparing the prices on AC cable. In this particular instance, the prices of AC had been increased except for the one item in question, which Mr. Macpherson indicated was based on an import price. If, as the documentary evidence indicates, the price of this item was decreased to meet American competition with respect to a specific item, without affecting the range of related items, it is an interesting illustration of how price competition within Canada could be regulated to permit uniform prices for domestic manufacturers without fear of a general breakdown of the agreement because of American competition. Speaking of this incident, Mr. Fitzgerald gave the following evidence:

"Q. Is this a case where a competitor has drawn attention to an error in one of the price lists or what he presumed was an error?

A. Yes, that is right.

Q. And in the document coded AEL6-8, a statement appears in part as follows:

'We have checked this with K.P.M. and have been advised that this is an adjustment based on import and is correct.'

Is 'K.P.M.' Mr. K. P. Macpherson, of Northern Electric?

---

1. Increased prices were instituted uniformly by all manufacturers on these products around September 3, 1948. (As indicated by the price sheets).

A. Yes.

Q. What would be the necessity of your checking with Mr. Macpherson?

A. At that time I believe these price sheets originated from his office.

Q. And you were asking him for clarification in this query?

A. Yes." (Evidence, pp. 642-3)

T. A. Lindsay also confirmed that he had referred Mr. Greenshields' comments to Mr. Fitzgerald who in turn contacted Northern and subsequently advised Mr. Lindsay that the "adjustment was based on import and is correct" (Evidence, pp. 727-8; Ex.163, AEL6-8, 207).

The evidence discloses many instances of Canadian prices following the upward trend of prices in the United States almost immediately, ostensibly because conditions in Canada paralleled those in the United States; however reductions in Canadian prices did not necessarily follow lower prices across the border. The agreements of the Canadian manufacturers of wire and cable made it possible at times for them to hold prices at existing levels in Canada in the face of reductions in the United States. The following undated memorandum with reference to such a situation was sent to T. W. Brackinreid by J. H. Fitzgerald:

"I spoke to Mr. K.P.M. this morning regarding recent decrease in prices in the U.S. on Insulated Wire and Cable.

The decreases on building wire, sizes No. 14 to No. 8 are approximately 4%; No. 6 to 250 MCM - approximately 7% and on the larger sizes, a varying percentage which is as high as 21%. 14/2 AC Cable was reduced 6% and other sizes approximately 8½%. Type ACL is reduced 12½% and Service Entrance Cable - 8 to 15% depending on size.

K.P.M. advised that he did not contemplate taking any action on our pricing unless he was specifically requested to do so and I advised him that we were in agreement with the policy of waiting to see what happened."

(Ex. 164, AEL6-27, 260)

Mr. Fitzgerald admitted writing the document and was asked if he could recall what happened to Canadian prices as a result of this discussion. In reply he said:

"A. Well, apparently there was no action taken at that time. I can't recall the sequel."

(Evidence, p. 644)

In some cases while a particular type of product was manufactured by only one company the other manufacturers would be interested in the price at which it was being sold because they manufactured substitute products which would be affected by any price adjustment (Evidence, p. 732).

On October 27, 1948, T. A. Gass of Canada Wire sent out a memorandum indicating that he had been studying the costs of neoprene Canadex type RNM N and felt that it should be at a higher level than the braided type. He suggested new prices and said:

> "If no one has any objection taking into considerating [sic] that we believe that we are the only ones presently producing this product, we would suggest Mac issue a list for same on the above mentioned basis."
>
> (Ex.58 and 196, AEL6-15, 6-16, 224-5)

In reply, J. H. Fitzgerald of Phillips wrote on October 29, 1948:

> "Acknowledging TAG's memo of October 27, while we do not manufacture the neoprene jacketed type of non-metallic sheathed cable, in the past prices on thermoplastic jacketed cable have been kept in line with the neoprene.
>
> While we have no objection to the neoprene being placed on a higher level, we are not in a position yet to advise whether we are agreeable to having the thermoplastic jacketed type at a higher level, in view of the fact that our studies indicate that the 4/64" rubber insulation and PVC jacket is the cheapest type of construction for this type of cable which may be made."
>
> (Ex. 59 and 197, AEL6-14, 228)

That the system of price collaboration was continuous appears from a price study under way on welding cables in January 1949 from which new proposed prices were prepared. A copy of the proposed prices was located in the files of Boston. A study had been made of the American laid-down prices to assist in preparing the new Canadian prices. Mr. Arnold of Boston said that he did not prepare the work sheet and that he had received it from another manufacturer (Ex.295, 2BIW11-1, 9202 , January 10, 1949; Evidence, pp. 1288-91). The subject matter appeared on the agenda of the meeting of January 11, 1949 (Ex.99, 2BIW11-2-2, 9204) and also on the agenda of the meeting of March 2, 1949 (Ex. 99, 2BIW12-1, 9219). Various witnesses admitted that prices which the manufacturers proposed to put into effect were frequently discussed and agreed to at meetings.

Early in 1949 C.G.E. was responsible for preparing prices on Type TW-Type T-600. New proposed prices to be made effective on February 1, 1949 were circulated to the other manufacturers for their consideration and approval. The subject matter appeared on the agenda of the meeting of January 11, 1949 (Ex. 99, 2BIW11-2-2, 9204).[1] At the same meeting and another meeting held on March 2, 1949 non-metallic sheathed cable appeared on the agenda.[2]

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1. A check of price lists of three of the manufacturers (Phillips, C.G.E. and Northern) revealed that the prices set out in the sheet were to be made effective on February 11, 1949 (Ex.294 and 338, 2BIW10-1, 9196-8 and 2BIW10-2, 9199-9201; Evidence, pp.1574-5).

2. New prices on this cable were introduced on February 11, and April 11, by most of the companies engaged in the manufacture of non-metallic sheathed cable.

Memoranda containing price information sent out by Northern to other manufacturers on price changes were located in the files of Industrial (Ex. 383, IWC3-2, 449, May 2, 1949 and Ex. 384, IWC3-3, 450, May 2, 1949). They referred to flamseal wire and cable (Type T and TW 600 volts) and RMM non-metallic sheathed cable with GR-S Insulation. The sheets indicated that the new prices were to be effective May 2, 1949.[1]

T. A. Lindsay of Automatic sent the following letter to J. H. Fitzgerald of Phillips on May 31, 1949 with reference to BX armoured water heater cable:

> "With reference to G's [Gass] memo dated May 26th, our Toronto Office have been using a figure of $123.00 per 1,000 ft. for this item. This price was given to them by Mr. Perry in his memo dated September 9, 1948. This price would, of course, have to be revised in line with other BX items and the suggested list price of $110.00 per 1,000 ft. appears satisfactory from our point of view.
>
> In addition to the Toronto Hydro, we also sell North York Hydro a considerable quantity of this material and we feel that they should likewise be given a discount of 15% from the list price which is established."
>
> (Ex. 165, PEW 17-2, 3045)

Mr. Fitzgerald explained that the purpose of the exchange of memoranda by the manufacturers with reference to this topic was to agree to a special price for the Toronto Hydro on a particular product (Evidence, p. 648).

As has been previously mentioned the restrictive action of the Canadian manufacturers sometimes made it possible to avoid price decreases when prices in the United States were lower than in Canada. At the meeting of June 8, 1949 it was indicated that the Canadian prices for building wires were from 10 to 15 per cent above the United States prices for the same product laid-down in Canada. There was a suggestion that the Canadian prices should be lowered but it was felt that the U. S. prices would increase. L. G. Lumbers of Canada Wire was of the opinion that they would lose more by meeting the prices than they would if they permitted imports to enter (Ex. 193, 2BIW14-2, 9228-10). G. W. Arnold of Boston testified that the meeting had decided to maintain their present prices and not meet the American prices (Evidence, p. 1349).

Exhibit 304, prepared by Federal and sent to Boston, was dated January 24, 1950 and consisted of notes of a meeting held on that date (Evidence, pp. 1892-3). Among other matters, it dealt with the following:

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1. New prices were published by Northern on these products on May 2, 1949 and they were the same prices as listed on these sheets. Similar prices were published by Phillips on May 12, C.G.E. on June 2, Triangle and C.C.F. on May 2, (with respect to non-metallic sheathed cables) and by Federal on August 29, 1949).

"BX Cable

There will be an increase, between 2% and 4%, in the price of steel and new prices will be out within the next few days. The effective date will be February 1st, 1950, and there will be approximately one week's notice of change. The price sheets are to be dated on varying dates but made effective February 1st."

(Ex. 304, 2BIW8-3, 9191-3)[1]

W. J. Culliton of Canada Wire sent out a group of prices on automotive wires and cables to representatives of the other manufacturers on August 4, 1950. The prices were effective June 30, 1950 (Ex. 148 and 201, AEL 11-1, 279-81). This was another instance of price agreement in the industry and T. A. Lindsay of Automatic was questioned about it:

"Q. Is this an instance where Canada Wire & Cable were advising certain prices on automotive wires and cables?

A. Yes.

Q. Is this an instance where the Automatic Electric took these prices and reprinted them?

A. Yes.

Q. Was this the usual practice?

A. On automotive wire only.

Q. Does the Automatic Electric manufacture automotive wires?

A. No.

Q. Does Phillips?

A. Yes.

Q. In this case you were receiving prices on automotive wires and cables from Canada Wire & Cable Company and not Phillips?

A. That is correct." (Evidence, pp. 738-9)

J. H. Fitzgerald of Phillips said that Canada Wire prepared the prices on automotive wires and cables in August 1950 and that Phillips had used these prices (Evidence, p. 652).

Canada Wire on November 6, 1950 sent out a group of prices on neoprene Canadex with ground wire with the following message:

"We note at the time of the last revision of the prices covering non-metallic sheathed cable, prices for the above products were not revised.

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1. Price sheets obtained from various manufacturers establish that the price of this type of cable was increased uniformly by all manufacturers on February 1st, 1950, from 2 to 4 per cent as indicated in these notes.

We are therefore enclosing our suggested prices, which we trust will be found quite in order."

(Ex. 68 and 171, PEW3-7, 2914)

An amended sheet was sent out on November 7, 1950 with the following footnote:

"This is in accordance with a listing already printed by Gr's (Greenshields of Triangle) office."

(Ex. 69 and 170, PEW3-16, 2921)

These documents were identified as originating with Canada Wire (Evidence, pp. 185-6, 1779, 1832) and represented the usual type of information exchanged on prices (Evidence, pp. 654-5, 906-7, 996-7, 1394-5).

In addition to the pricing set-ups on power cables and pre-assembled aerial cables which had been worked out by other manufacturers, C.G.E. had prepared prices on rubber insulated neoprene jacketed cables (RINJ). Such prices were used for the preparation of tenders and were not circulated to customers. Copies of price sheets for RINJ were located in the files of a number of the other wire and cable manufacturers and in each case it was admitted that the prices originated with C. G. E. A copy of these prices, located in the files of Phillips, was shown to Mr. Fitzgerald of Phillips and he was questioned about them (Exhibit 173):

"Q. Could you tell me whether you have seen the document before or whether you can identify it?

A. Yes, I have seen it.

. . .

Q. Do you know or can you recall from what other manufacturer you received this information?

A. I believe it was received from Canadian General Electric.

. . .

Q. When you received this information did you adopt these prices for your own price lists and folders?

A. At the time this was used we used this as a guide.

Q. Did you prepare copies of this information and amend any of your existing price lists accordingly?

A. No, at that time there were no price lists covering this particular type of material.

Q. You used this information as a guide in your own office in arriving at quotations?

A. That is correct." (Evidence, pp. 657-8)

F. W. Barnhouse of C. G. E. was also asked about these prices:

"A. I think we prepared the original information. I don't know where -- I cannot speak of this piece of paper.

Q. When you say 'We prepared the original', would you send it out to other manufacturers for comments, or is this where you would prepare price information and send it to Northern Electric for publication?

A. In this particular product, this happened to be a development of ours on which we were more efficient and were further along in the development and more than information on costs, and I think this is pretty well recognized that we would quote prices that were competitive and usually people followed us on this particular product."

(Evidence, pp. 1577-8)

In October 1951 pricing information was exchanged between the manufacturers with a view to arriving at uniform prices on instrument lead cables (Evidence, p. 659). The prices for this product were prepared and distributed by Northern (Evidence, pp. 1836, 1782). With reference to this a memorandum dated October 31, 1951 was sent out to representatives of the wire and cable industry and stated in part:

"We are in receipt of a price sheet from M's office covering No. 14, No. 16 and No. 18 Instrument Lead Cable, which are made up with Flexible Bare Copper Strand, Cotton Separator and 4/64" Code Insulation.

We feel the prices as shown on M's sheet to be exceedingly high in the light of prices currently established for VHR Radio-Hook-Up Wire."

The writer then set out some prices and concluded with:

". . . we feel the prices applicable should be more in line with the lowest resale prices for the VHR items listed above."

(Ex. 137, 3PEW5-20, 8884-8)

Mr. Borden in his evidence stated that the only real check on the price level for wire and cable in Canada was the threat of outside competition (Evidence, p. 443). When competition from the United States was not likely owing to control measures in that country arising from their defence program, the Canadian manufacturers were free to set their prices without reference to U.S. prices. The following memorandum was sent out by Northern on December 19, 1951 to the other manufacturers:

"We are attaching hereto proposed increased Base Prices and Extras for Bare Copperweld Wires and Cables and increased prices for Weatherproof Copperweld Wires and Cables, for your consideration. The Base Prices have also been increased in keeping with the new Toll agreement with Copperweld Steel Co.

You are, no doubt, aware that these prices have not been revised to take care of increased costs other than Copperweld Rod for several years, and we feel that it is time to make an

adjustment for increased manufacturing costs other than rod.

We have made cost price studies on these products and, on the basis of their results, have arrived at the attached prices. Further, in view of the fact that prices in the U. S. are 'frozen' at the present time, and since there is only a slim possibility of Copperweld products being imported into Canada, we have ignored our past procedure of basing our prices on U. S. laid down prices.

We are also recommending that St. Johns, Que. be established as an F.O.B. Point since we have had several requests to do so.

We plan to issue these increased prices effective Dec. 24th, 1951. If you are not in agreement kindly get in touch with us immediately."

(Ex. 125, 3NE5-6, 4371)

D. C. Borden of Northern admitted that this memorandum had originated with his company and was prepared on his instructions (Evidence, pp. 482, 1004-5). He was asked if he wished to make any explanation with reference to it and replied as follows:

"A. Yes, I would, Copper-weld - incidentally, that is a special composite wire with a steel interior to give it strength and a copper exterior to make a better electrical conductor. Northern Electric is definitely and quite legally the principal copper-weld representative in Canada. The Copper-Weld Company have made agreements with other manufacturers and all of the rod from which the wire is drawn comes from the Copper-Weld Company in the United States. Because Northern Electric is the senior or the oldest brother in the Copper-Weld family in Canada, they look to us for guidance on prices.

Q. Who looks to you for guidance?

A. The other manufacturers. They do look to us for guidance, and the reason I instigated this was that Clish pointed out to me that our costs for copper-weld rod had been steadily increasing and various other costs had increased and the profit on it had become practically negligible. When I say practically negligible I mean our over-all profit. Some of the items in the copper-weld family were making profit but the over-all was not satisfactory."

(Evidence, pp. 483-4)

Mr. Borden was referred to the third paragraph and asked to explain what was intended. He said that the Canadian costs on Copperweld were higher than American costs because of the lower volume of production in Canada. In order to get any business Canadian manufacturers had been obliged to sell at the American "laid-down price." This level did not afford them a satisfactory return but they had continued to carry the line for prestige. In the fall of 1951 an effort was made to correct this situation and new prices were worked out on the basis of Canadian costs. These prices were higher than the American laid-down prices but in view of the shortage of Copperweld in the United States, it was possible

to introduce the new prices in Canada (Evidence, pp. 484-5, note errata).

Mr. Borden was questioned further about the introduction of these new prices on Copperweld and he outlined the procedure by which interested manufacturers considered and agreed to the introduction of the revised prices for Copperweld:

"THE COMMISSIONER:

Q. Do you have any competition in Canada on this copper-weld cable?

A. These people are all competitors.

Q. It is produced by the others?

A. It is not exactly the same group that we have been talking about on the straight copper products. That is, there are a total of nine wire and cable manufacturers in Canada. There are four power cable manufacturers but the number of people who sell copper-weld is a slightly different group. It just happens that people have direct dealings with the Copper-Weld Company so certain others have entered the copper-weld field as our competitors. The Canada Wire & Cable buy their copper-weld rod from the Copper-Weld Company in the United States. They buy their rod and offer a fairly complete line of products. One or two of the smaller companies buy wire from us. We import the Copper-Weld rod and we draw it down to the size these people want and sell it to the manufacturers who insulate it and offer an insulated product. So you can see that we have competition. We have five competitors, some of whom buy the wire from us and others the rod product. We have competition.

Q. As of this date were you concerned with competition within Canada?

A. We wrote this letter to competitors.

Q. Proposing an increase in price?

A. Yes.

Q. Because your competition from the United States was decreasing and therefore, you were able to do it?

A. No, because we have competition from these Canadian manufacturers.

Q. Have you what you call your orderly marketing arrangement with them?

A. Yes, this is part of it.

Q. Would you have been able to do this if supplies in the United States had been adequate and they would have continued exporting to Canada?

A. It would have been more difficult. I do not think we could have.

Q. Were you able to make this proposition because of your orderly marketing agreement which protected you in the Canadian market and because American competition was declining?

A. Yes, I do not see how we could have done it. The cost price analysis we made called for an increase in prices. I will have to explain it. I told you this morning what happened in the flexible cord business. We had to go out of it because we could not get the prices that would show a profit. If there had been ample supplies of copperweld coming in from the States at these prices we would have been faced with a continuing low profit. I do not know what would have happened, but we did take advantage of the fact that the Americans were not shipping copper-weld into Canada to bring these prices up to a level that we thought was reasonable.

Q. To your knowledge were your competitors affected in the same way; did they find the price unduly low?

A. I do not think I have any information on that. There was some discussion of this by phone but I do not really know. They accepted it, but there was a discussion. What they thought of I do not know. They might have said it was not high enough. You may be able to find out from some one else.

MR. HUNTER:

Q. Mr. Borden, were these increased prices made effective December 24, 1951?

A. I think so, but I am not sure. The thing seemed to go pretty well on schedule.

Q. Did the competitors of this copper-weld product go to your proposed increased price at the same time?

A. I think they would follow. We are just telling them we are putting up our price.

Q. You say:

'We plan to issue these increased prices effective December 24, 1951. If you are not in agreement kindly get in touch with me immediately.'

A. It is just giving them an opportunity to discuss it on the phone, which they did. I think that phrasing was worked out a long time ago but what actually happened was that we discussed it on the phone. Either Clish or Macdonald discussed it and there was no serious disagreement, and we issued our prices.

Q. Which of your competitors would be concerned with this type of product?

A. I know that Canadian Wire & Cable were concerned. Actually if I am not mistaken, that is made by Canadian Wire & Cable and I do not think that anybody else makes it. You see,

Phillips Electric Company is interested in copper-weld principally for making communication products, what they call telephone drop wire. Whether or not they have used some of it to make weatherproof I do not know. Canada Wire is the principal competitor.

Q. You mentioned to the Commissioner there were five competitors in this field in Canada. Who are these five?

A. The five I could tell you.

Q. Their names?

A. Canada Wire & Cable, Phillips, Cables, Conduits & Fittings, Canadian General Electric to a very limited extent. There is an agreement to manufacture but they don't do very much. Very recently Federal Wire & Cable, but they don't do much of these products necessarily. All I can be sure is that Canada Wire and Northern make bare copperweld.

Q. There is a strong likelihood that this was only given to Canada Wire?

A. It may have gone to some of the others. I am not sure who makes that product."

(Evidence, pp. 485-9)

Three price sheets covering Weatherproof Copper Wire dated January 14, 1952 and headed "Canada Wire & Cable Company" were located in the files of Industrial (Ex. 385, 2IWC3-1, 3-2, 3-3, 14113-5). Weatherproof is a tonnage material which appears to have fluctuated whenever the base price of copper changed. These sheets were the means by which Canada Wire advised Industrial of the price change which was made effective by all companies producing Weatherproof on January 14, 1952.[1] Mr. Wagman of Industrial was questioned about this Exhibit:

"Q. I show you Exhibit 385. These price sheets all appear to be effective January 14th, 1952. Would you refer to the document coded 2IWC 3-1. This refers to solid annealed weatherproof copper wire. Does your Company manufacture that product?

A. Yes, we do.

Q. And is this one of the items for which you receive your price advice from the Canada Wire and Cable?

A. Yes, it is.

---

1. The new prices cancelled previous prices put into effect on December 17, 1951 (price sheets of all companies were checked and the dates of December 17, 1951 and January 14, 1952 appeared on the price sheets of all companies and the prices on these sheets checked with Exhibit 385).

Q. Would you refer again to Exhibit 304 and the second page. I think you mentioned that for weatherproof wire you received your price information from Phillips Electrical Works. Is this solid annealed weatherproof wire a different type of wire than that referred to on this - - -

A. Well, you see on here they have double tape, double braid - we do not manufacture that. Copper neoprene - we are not into that. I am under the impression that Canada Wire & Cable does give us information but it might possibly be Phillips Electrical.

Q. Now, on this sheet 2IWC 3-1 are there any products that you do manufacture?

A. Yes, solid annealed weatherproof copper wire.

Q. That is under the double braid?

A. Under the double braid, yes.

Q. Now, is this the type of information to which you made reference earlier as that which you received from your competitors?

A. Yes.

Q. And when you receive such a price list as this, then you make whatever adjustments are required in your own price lists?

A. That is true.

Q. Is that correct?

A. Yes.

Q. With respect to those items for which other manufacturers are responsible you do the same thing, do you?

A. That is true.

Q. That is, when you receive advice from them such as this?

A. Yes, that is quite true.

Q. And you make changes?

A. That is right.

Q. And that has been going on, I take it, since this new division was made two years ago, some years ago?

A. Well, no. We have just been manufacturing weatherproof wire for the past year.

Q. That is as far as this product is concerned it has been going on since you started the manufacture?

A. Yes, I believe it has." (Evidence, pp. 2023-24)

Referring to Exhibit 385 Mr.Pryce of Canada Wire said these sheets were generally sent out to wholesalers and that normally copies of such sheets would not go to Industrial in this form (Evidence, pp. 1840-1). Pricing information on this product was the responsibility of Phillips under the arrangement agreed to by the manufacturers in January 1950 (Ex. 304; Evidence, p. 1841).

One of the more recent examples of agreement on uniform prices by the wire and cable manufacturers occurred in January of 1952. The representatives of the wire and cable manufacturers agreed to introduce new uniform prices on building wires at this time. Mr. Borden of Northern in his evidence indicated that in addition to this agreement on uniform prices there was also an agreement to stagger issuing the new prices to give the impression that competitive conditions prevailed in the wire and cable industry (Evidence, pp. 458-9). On January 25, 1952 D. C. Borden of Northern sent out the following memorandum to representatives of other wire and cable manufacturers concerning building wires:

"Attached hereto are sheets showing our proposed decrease prices on the following products -

Types 'R' and 'RF'
Types TW, TF and TFF
Types RH and RW
R.I.L.C. 0-600 Volts
(Sizes 14 to 4 incl.)

If no contrary-minded comments are received by February 4th, 1952 we intend to issue these prices effective Feb.11th, 1952. It is expected that others, on receipt of our Price Sheets, will issue theirs on dates after Feb.11th, 1952."

(Ex. 115, 3NE1-1, 4303-10 and
Ex. 175, 2PEW3-1, 5270-7)

A number of pencilled notations on the document 3NE1-1, 4303-10 were identified as the handwriting of S.H.R. Clish. The document indicated that the memorandum was sent to L. G. Lumbers of Canada Wire, J. H. Fitzgerald of Phillips and J. W. Barnhouse of C. G. E. (Evidence, p. 446) and the evidence indicates that this was done on the instructions of Mr. Borden. These new prices were discussed by the manufacturers before being put into effect (Evidence, p. 447) and Mr. Borden was questioned on the circumstances leading up to the introduction of these prices:

"THE COMMISSIONER:

Q. Was there a discussion before you issued this memorandum or after it was issued?

A. There were discussions of a kind. I think a history of this is interesting because this very definitely was one of the cases where our profit was too high.

Q. Where the Northern Electric profit was too high?

A. Yes, the profit rate on building wires. This emanated from fairly well up in the top in Northern who would get monthly and quarterly reports showing the profit on each line. Now, the first I heard of this was when Mr. Eastlake told me that the management had pointed out to him that our profits were unreasonable high on the classification that includes this and that I had better do something about it. At a meeting before this - let me see now - it was at a meeting before this date. It is beginning to make me think there must have been another meeting in there. At a meeting before this date I told the members of the group exactly what I have told you now, that Northern was concerned with the unduly high profit on this line and we felt we must reduce our price. Some of the people in the meeting, some of the larger ones who looked at things in a broad way, said, 'Well, we must agree with you; our profits are too high.' I am quite sure I can remember what I reported back to Management on that, but the comments varied all the way from agreement of the larger manufacturers to silence on the part of small manufacturers. I was satisfied that the whole industry was in pretty much the same condition we were in. We were making what seemed an unreasonable profit too far away from this level that I think is right. Top management said, 'Did they disagree?', and I said, 'Substantially, they were in agreement', and then we worked it out and on certain items reduced it 5% and others 10% and others different figures. All of this was based on looking at our costs. The list price of the items were changed and these were sent out. Now, that was the first discussion. I said a moment ago there were two discussions. The second discussion I can remember and I believe that somebody said, 'I am not going to make any money on No. so and so, type R.' I can only generalize. If you will look over the whole line you are probably making plenty of money and this is a price, we were convinced, at which the industry could well afford to sell the product. Any comments that came back were pretty well talked out. There was not any serious hardship going to be worked on anyone, and consequently, the comments that came back did not produce any effect and as it says here, 'If no contra-minded comments are received by February 4th we intend to issue these prices.' In effect, there were no contrary-minded comments because we talked them all out."

(Evidence, pp. 447-9)

Mr. Borden was asked why Northern did not go ahead and issue the prices without first consulting its competitors and he replied:

"A. Because experience has shown that group action is more effective, and the general pattern of our pricing is group action. In other words, we found that it made for a much more orderly system of marketing to tell other people what we were going to do.

Q. Was there an understanding between Northern Electric and the other manufacturers which required Northern Electric to advise them in advance of a prospective decrease in price?

A. Well, we could not use the word 'required' at all. We are reasonably friendly in the industry and we like the other fellow to tell us what he is going to do, and therefore, we tell him. It is good business for us to do that."

(Evidence, pp. 449-50)

Mr. Borden insisted that the wire and cable industry was still highly competitive but admitted that the new lower prices might not have been introduced at this time if one of his competitors had been able to show that the new prices would have been a "tremendous hardship" to him (Evidence, pp. 450-3).

These prices were made effective by Northern on February 11, 1952 and were introduced by their competitors on or after this date (Evidence, p. 453). Mr. Borden was asked why he suggested in his memorandum that the prices of other manufacturers be made effective after February 11 and, in replying, indicated the arrangement in the industry whereby the appearance of competition was simulated:

"A. Well, I think we know the reason. It is something that is inherent. If there was no collusion somebody would issue a price sheet. In this case the thing we are talking about, the Northern Electric would have issued a price sheet. Five minutes after it got out in the field every competitor's salesman would have found it and phoned in about it and they would have decided they would have to have the same price and a couple of days later they would issue a similar price sheet. That is the thing that would happen and must happen because products are built to the same standard and the man with the low price gets all the business. I have inherited this system of staggering prices.

Q. The issue of price sheets is staggered?

A. Yes.

Q. When your competitors issue price sheets after yours and the effective date is after your effective date, how do you get away from this difficulty which you earlier mentioned; are they not going to lose business, anyway?

A. Yes.

Q. What is the object of this practice?

A. It seems worth while to lose business and we are not always the leaders.

Q. How many days did your competitors issue price sheets following yours of February 11?

A. I do not know. There was no discussion on that. All the price sheets were changed, my guess is within two weeks.

Q. Is it not a fact that on or after February 11, 1952, your competitors were using the prices which are set out in this memorandum, if this is the prices you subsequently issued?

A. Yes, afterwards when they got time to publish them. In other words, here is what strictly should have happened. We published the prices and the competitor finds them in the field and then he has a perfect right to sell at these prices but these are big organizations and it takes quite a time. You have to get the prices from the field and to the Pricing Department. That would be the selling prices but I do not know if they would be using these prices. I would not expect them to be using these prices until they came out in a sheet.

Q. Was the adoption of these prices of this particular item of material you refer to ever discussed at a meeting of the manufacturers?

A. I just told Mr. Goldenberg direct that I went to a meeting to sound out what their reactions would be.

Q. At the meeting was there any arrangement made then as to how much of a jump Northern Electric would have on its competitors with regard to the date of publishing the new prices?

A. Not particularly. For some time it has been the practice that prices would not go out all on the same date but they can do it as fast as they like. It is entirely up to the individual. I do not ever remember any discussion, in which it was agreed, that it was agreed that you bring them out on this date and I will bring them out on that date.

Q. In other words, the arrangement here was that Northern Electric would put theirs out first and the others later?

A. Yes." (Evidence, pp. 453-5)

This product was produced by all the manufacturers and while the memorandum indicated only three recipients, D. C. Borden thought that the initials were not necessarily restrictive and that copies probably went to other manufacturers (Evidence, pp. 455-6).

Mr. Greenshields was questioned about these new prices on building wires which were made effective in February 1952 and gave the following evidence:

"Q. These would be the proposed prices and after an exchange of information there would be an agreement as to what the new price was going to be?

A. Yes.

Q. Is that what happened to building wires in February of 1952?

A. Yes." (Evidence, pp. 1393-4)

Under the allocation of January 1950 (Exhibit 304) Northern was responsible for preparing the prices on building wires and this adjustment in 1952 indicated that, with respect to building wires, the arrangements entered into by the manufacturers in 1950 for

the preparation of prices were still in effect.

Exhibit 340 is a group of price sheets covering the product RINJ previously referred to. These sheets were dated February 11, 1952, cancelling previous sheets dated January 4, 1952 (Ex. 340, 2CGE 2-2 6176-87). This was one of the products for which prices had been established to facilitate quoting on tenders. The prices were retained at head office and were not included in the published price lists of the wire and cable manufacturers. The evidence indicates that C. G. E. prepared the prices on this product at this time and sent proposed prices to interested competitors. This enabled all manufacturers to submit identical prices when tenders were called on RINJ cables (Evidence, pp. 1578-9).

Early in 1952 the manufacturers of wire and cable introduced price changes for a number of products including non-metallic sheathed cable. This pricing information was prepared by C. C. & F. and sent to the other manufacturers for their approval. In this case non-metallic sheathed cable appears to have been discussed at the manufacturers' meeting of February 21, 1952 (Ex.121, 3 NE4-2, 4323-5). The agreed-upon prices were then circulated by C. C. & F. in memoranda form prior to the introduction of the new prices (Evidence, p. 2033). A copy of this advance information was located in the files of Industrial, bearing the date February 25, 1952 (Ex. 402, 2IWC2-5, 14111-2). A.A. Wagman of Industrial confirmed that this was the type of price information which he received through the mail and from which he prepared his prices (Evidence, pp. 2032-3). He agreed that as a general rule he would be consulted before the prices would be sent out and that under the pricing agreements which existed in the industry, he was supposed to receive the new prices before they were made effective (Evidence, p. 2034).[1]

New prices were issued by Northern on telephone wires on March 6, 1952 (Ex.176, 3PEW5-25, 8900) and a copy of these prices located in the files of Phillips was shown to Mr. Fitzgerald. He was asked if he could identify these prices and in reply said:

"A. Yes, that is Northern Electric's price sheet.

Q. You received that from the Northern Electric?

A. That is correct.

Q. Is that the original document which you received from them, or a copy of it?

A. It is an original.

Q. I take it from our conversation this morning when you received a document such as this you would then prepare your own price sheets and send them out to the branches of the Automatic Electric?

A. That is right.

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1. These new prices were made effective by the wire and cable manufacturers on February 25, 1952.

THE COMMISSIONER:

Q. Would you have discussed these prices with the Northern Electric before you received this sheet?

A. Not necessarily, Mr. Commissioner. In a case of this kind this particular price sheet is something we might say is a name brand. It is a rather special item and they might issue on their own without any discussion on this."

(Evidence, pp. 665-6)

Prices of wire and cable products continued to be discussed in 1952 at meetings of the manufacturers with a view to reaching agreement. Price changes were introduced when a majority were in favour of the change. It would appear that where agreement was not reached prices remained unchanged. J. W. Kerr of Triangle sent the following memorandum,which was found in the files of Northern, to representatives of the other manufacturers on March 17, 1952:

"We should appreciate your being ready to discuss steel vs. aluminum armoured cable (AC & ACL)."[1]

(Ex. 122, 3NE4-5, 4328-45)

In pencil and signed "MRM" the following notation was written on the bottom of the above memorandum:

"This is from J.Kerr of Canadian Triangle Conduit Co. At our last meeting, you will recall that Kerr and Greenshields were insistent that the prices for steel armoured AC and ACL cables should be lower than those for aluminum armoured. They stated that steel armoured cable cost them much less to manufacture than aluminum armoured cable. The other companies including us did not agree and it was voted down.

Apparently Kerr still wants to make an issue. I have asked Mr. Clish to let us have comparative costs."

M. R. Macdonald of Northern explained what had taken place concerning this matter:

"Q. Is there any explanation that you would like to make as to what the occasion was as to why Mr. Kerr would be asking Northern Electric to be prepared to discuss steel versus aluminum armoured cable?

A. I said in my own notes Canadian Triangle had suggested that the prices for steel armoured AC-ACL cable should be lower than for aluminum cable.

Q. I notice your memorandum goes on to say:

'They state that Steel armoured cable costs them less to manufacture than aluminum armoured cable. The other companies including us did not agree and it was voted down.' Was this at a meeting of the manufacturers' representatives?

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1. The phrase "(AC & ACL)" was added in pencil.

A. Yes.

Q. And was this matter subsequently discussed again at a further meeting?

A. No, it was not.

Q. Was Mr. Kerr voted down or were the prices eventually adjusted?

A. No, they were left as they were. I might explain, if I may. Actually in this case it is not a case of the Canadian Triangle, in my opinion, being able to make steel armoured cable at a lower price than aluminum armoured cable, but it is a case of them not being able to make aluminum armoured cable as cheap as steel armoured cable, which we can do. If you have examined these attached cost sheets, these are the sheets that we prepared for the meeting to discuss that very point. The reason he was voted down, to use the words I have in there, was that the other manufacturers including Northern Electric thought there was very little difference in the costs of the two armoured cables.

Q. When you did not agree the prices remained as they had been?

A. Yes, we suggested that the Canadian Triangle investigate their costs a little further. It is made on the same machines and it is impossible to explain how you can make steel as cheap as the aluminum. It cannot be done.

Q. Did the Canadian Triangle continue to sell at the price they had been selling at; they did not lower their price?

A. They continued to sell it at the same price."

(Evidence, pp. 580-81)

J. H. Fitzgerald of Phillips recalled that this question was discussed at the meeting of April 2, 1952 and no decision was reached. He was asked to explain what the problem was in this case:

"A. During the steel shortage we developed an alternative using aluminum in place of steel, and it has been selling at the same price and most of our findings are that it costs a great deal more and there was a question as to whether or not there should be a difference in price.

Q. Am I correct in my understanding that one of the manufacturers felt that the price should be lower for steel?

A. Yes, that is correct.

Q. Are the prices lower for the steel armoured than for the aluminum armoured?

A. No, they are the same.

Q. Although, I gather from what you said they should be lower?

A. No, I think pretty well everybody would have to come to the same conclusion that the aluminum costs more but it is a question of whether or not you are going to absorb that extra cost to have uniformity, and also it is a question of whether the customers would be prepared to pay a premium for the aluminum.

Q. In any case, at the present time there is no differential in price and there is uniformity amongst the manufacturers on the price?

A. That is right." (Evidence, pp. 696-7)

The evidence indicates that while most manufacturers recognized that the aluminum armoured cable cost more to produce and would justify an increase in price over steel, they were reluctant to increase the price of aluminum armoured cable because of the shortage of steel. Where both prices were the same, aluminum armoured cable could be substituted for steel but if a differential was established, this could not be done and the demand for steel AC & ACL would be greater, thereby increasing the difficulties of supply. Triangle was in a favourable position of supply with respect to steel and was therefore anxious to establish the differential (Evidence, pp. 1524-5).

T. J. Bell of Federal explained at length how the discussion arose:

"A. The problem of AC refers to the production of BX cable which is an armoured cable used in wiring of industrial plants and wiring of houses. BX is a strip of metal which surrounds the cable, is wound around it to give it protection from abrasion and abuse. Up until 1947 or 1948, I believe, steel was the only metallic substance which was ever used in the production of BX cable. I believe in 1947 or 1948 the BX steel strip, which is not available in Canada, became in extremely short supply in the United States. It became impossible for the Canadian producers to receive enough of this strip to continue their production of BX cable. One or two companies began to experiment with aluminum strip to replace BX, and after experiments that I believe lasted over a period of twelve to eighteen months they were successful in obtaining approval from the Canadian Standards Association for a BX cable with an aluminum strip to replace steel.

At that time the other manufacturers who were not in a position to obtain steel began to produce this cable with aluminum which was available from the Aluminum Company of Canada. As I understand, the two oldest manufacturers and the best established manufacturers of BX in Canada, were still able to obtain adequate quantities of steel. So it became apparent that some manufacturers would continue to use steel and others would continue to use aluminum.

In the initial stages in the development of this particular cable it was much more expensive to adjust the equipment to run aluminum than to use steel, so that while the aluminum cost less as a basic raw material, the finished product or the resulting cost of the finished product was approximately the same or perhaps slightly higher. However, even though it cost more to produce, it was necessary to remain competitive with steel, so the manufacturers sold aluminum armoured cable at the price which was established for steel armoured cable.

Now, as the steel situation changed in the United States, some of the producers in Canada found that they were still producing steel and that a good many of the jobbers and contractors were preferring the new product which incorporated aluminum. It was lighter, it saved money in transportation costs, it was lighter for the contractor to carry around. It was a very nice product; it satisfied the requirements of the C.S.A.code. So the people still producing steel saw perhaps there was some disadvantage in still using steel since the consuming public had been educated to use this new product.

Q. I notice at the bottom of the document 3NE4-5 there is a pencil note which states in part as follows:

> 'At our last meeting you will recall that Kerr and Greenshields were insistent that the prices for steel armoured AC and ACL cables should be lower than those for aluminum armoured. They stated that steel armoured cable cost them much less to manufacture than aluminum armoured cable. Other companies, including us, did not agree and it was voted down.'

Now, do you recall being present at any meeting at which a discussion took place as indicated in this part of this handwritten memo which I have read to you?

A. Yes, I do, and I will agree with part of this but I will disagree with the last sentence, I will not agree with.

Q. That is the sentence which reads:

> 'Other companies, including us, did not agree, and it was voted down'?

A. 'Voted down'. Since that is not my writing, it is not my document, I only give you my own interpretation of the thing. The Canadian Triangle Company were anxious to continue using steel since they have a steel plant in the United States that produces this material. They felt that they did not want to go to aluminum and that if it was necessary for them to lower the prices to make steel they would do so. They asked us this question: 'Would you agree to sell steel wire at a lower price?' We did not agree to sell steel at a lower price. We said: 'We will continue to make aluminum available at the current price'. There was no vote on the matter and it was certainly left to them that if they preferred and

desired to sell steel at a lower price it was absolutely up to them and it was their prerogative to do so if they wished."

(Evidence, pp. 1960-63)

2. Base Prices and Tonnage Materials

In connection with many of the large volume wire and cable items sold by the manufacturers, the cost of copper or lead constitutes a very large part of total cost. Power cables and tonnage materials, including weatherproof, annunciator, bare copper wire and magnet wire,[1] are the leading products affected in this way. Since copper and lead are commodities subject to frequent and considerable fluctuations in price, these fluctuations must be reflected in the price of fabricated products of which they are important ingredients. As such adjustments might be made in a variety of different ways depending upon the source of price information, the frequency of adjustment and the amount of change in metal prices before adjustment is considered necessary, the manufacturers of electrical wire and cable could not have maintained a completely uniform price system unless they also agreed to adopt a uniform policy for dealing with the effects upon their products of fluctuations in the prices of base metals. Accordingly, they have used a uniform formula system for reflecting these changes in the prices of tonnage materials, and have used uniform copper bar and lead pig bases in calculating prices of power cables. They also have consulted each other on every occasion when adjustment was made.

The system of adjusting prices by reflecting changes in the copper base price has existed in the industry for many years, but the factor on which it is fixed has depended on world conditions and markets. The base price appears to have been tied in with the purchasing arrangements which the wire and cable manufacturers entered into with the producers of copper. In July 1947 representatives of copper producers, rod rollers and wire drawers met to discuss the problem of supply and price. Satisfactory pricing arrangements were worked out and it was agreed to base the price of copper on quotations in American Metal Market, a trade journal. In April 1949 the producers of copper indicated that the price would henceforth be based on quotations in the Engineering and Mining Journal, "Metal and Mineral Markets" rather than Friday's Connecticut Valley price as published in the American Metal Market.

The formula agreed upon for adjusting the prices of tonnage materials provided that adjustments would be made whenever changes in the base price of copper bars would bring about an increase or decrease of at least 25 cents per 100 pounds in the manufacturers' final price of the finished product. Each of the products included in the tonnage group, including annunciator, bare copper wire, magnet and weatherproof wires, at one time had a base price directly related to the copper bar base price and these base prices would be adjusted to give effect to increased or decreased prices, as the bare copper base fluctuated. In the case of copper, the base was arrived at in January of 1952 by adding a conversion charge of $8.65 to the bare copper base, then adding 20 per cent of this total and subsequently a further 1 per cent to arrive at the bare copper base. The conversion charge represented

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1. Some tonnage materials are also sold on a footage basis and have been referred to elsewhere.

rolling and fabrication costs and has been adjusted a number of times since 1948 to reflect increases in costs other than copper. Where changes were made in this formula, it would appear that agreement by the manufacturers producing bare copper wire was necessary to make it possible for all manufacturers to adjust their bare copper prices uniformly and without delay. While all manufacturers were familiar with the nechanics of working out the base price, Northern circulated revisions to the base price for bare coppor wires and cables (Ex.146).

Base prices were listed for weatherproof, bare copper, annunciator and magnet wires prior to February 2, 1948 and thereafter for bare copper and magnet wire. At that time weatherproof and annunciator wire became available on a footage basis and the price set-up was adjusted to meet this new arrangement. Extras were added to the list prices to arrive at the net price of a particular size and type of bare copper and magnet wires.

The frequent price changes which took place for tonnage items was taken care of by price cards which informed the trade of the new base price. This eliminated the necessity of issuing new price sheets whenever the base prices of these wires and cables fluctuated and made it possible to make the adjustment effective without the delay that the issuing of a price sheet would involve.

While the process of adjusting the copper base was essentially automatic, some of the witnesses indicated that there have been occasions when the full decrease in copper has not been followed. It was also indicated that the amount of increase or decrease in the base price and other factors affecting the base price were discussed by the manufacturers by telephone (Evidence, pp. 1743-4, 1932-3). Both J. H. Fitzgerald of Phillips and K.P. Macpherson of Northern referred to the possibility that the full decrease in copper might not be taken where other factors were involved (Evidence, pp. 613 and 270).[1]

As early as 1940 there are references to the procedure to be used when adjusting prices for copper increases. In this connection T. W. Brackinreid of Phillips sent the following suggestion to P. A. Timmons of Phillips on February 23, 1940:

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1. An examination of records pertaining to the computation of the base price of copper and lead in the files of Northern indicated that for the weeks ending December 14, 1951, January 11, 1952 and January 25, 1952 the full decrease in copper was not reflected in the base. The following notation on these work papers indicated why the copper base was not adjusted in the usual manner:

   > "Although present Rod prices would indicate a much greater decrease, it was decided to take a token decrease of 25¢, bearing in mind that other Raw Materials and Labour have increased since last Wire decrease in August, 1951.)

   A similar notation appeared for the weeks ending January 11 and 25, 1952. For such instances as these the process was not automatic and other manufacturers would have to be consulted and advised in order to make similar adjustments in their prices.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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1. An examination [illegible] bearing on the computation of the base price of copper [illegible] that for the week ending [illegible], 1929, [illegible], 1929, and January 15, 1929, [illegible] in the base. The [illegible] differed only th[illegible]

"[illegible]

[illegible]

2. [illegible] 24, 1929, [illegible] and method in order to [illegible]

"In my telephonic conversation with you several days ago, I pointed out that Mr. Gass had shown his desire to agree with our contention that when the price of copper increases we should not accept orders at the old price, but all contracts should be taken at the increased price.

I would suggest that you talk to Mr. Gass along those lines and see if both of you cannot make a concerted effort on the Northern, or if you think it desirable probably we should bring this about through other channels."

(Ex. 247, 3PEW 13-4, 9153)

Such an understanding would eliminate the possibility of lower prices being quoted when copper increases were put into effect.

Mr. Brackinreid in his evidence confirmed that the discussions were directed towards the adoption of a uniform practice in handling price increases:

"Q. Was this an instance where there were discussions between some of the manufacturers with a view of arriving at a uniform contract in regard to handling increases in prices of copper and reflecting these increases of your own prices to customers?

A. It looks like that way.

Q. You read it, Mr. Brackinreid. Can you say whether it was or not?

A. I would say so." (Evidence, p. 831)

These base prices bore a direct relationship to certain wire and cable prices and throughout the evidence there are numerous references to this set-up.

Mr. Macpherson of Northern explained how the base price was used to calculate and adjust the price of tonnage materials:

"Q. Do the manufacturers use this base price of copper as set out in those journals weekly? Is it a weekly price or a daily price?

A. I believe the correspondence indicates we are currently buying on the weekly average price.

Q. Is the weekly average price of copper used for any other purpose than to set the price of your copper rods which you purchase from the two companies, Canada Wire and Cables and Phillips?

A. The weekly average price is also used in establishing the base price of copper. If it goes up, the price of copper wire goes up. If it goes down, the price of copper wire goes down.

Q. Can you explain the mechanics of how the increase or decrease works in the industry on copper wire and cable?

A. No, I cannot.

Q. Are you familiar with it?

A. I used to be in times gone by. I do not know what they are doing now.

Q. When you were sales manager, what was the practice?

A. Well, the practice was that we added our conversion charge to the copper rod price and added the sales tax and rounded it off to the nearest quarter of a dollar.

Q. When is it decided to make those increases or decreases based on this change in copper?

A. When we get our new price of copper rods each week.

Q. Do you change each week or is there a certain minimum amount?

A. We do not change under 25 cents.

Q. Is that 25 cents per what?

A. One hundred pounds. I think that is what it was when I had contact.

Q. Let us amplify that a bit. If you get an increase in copper according to whatever journal you are using of more than 25 cents per 100 pounds, then what do you do?

A. That would mean an increase in the price of copper wire by that amount, roughly, taking in the exchange variations and the weekly average price. We get the weekly average price from the copper producer. They are the people who sent it out.

Q. If there is that change, you make the adjustments and issue new sheets?

A. That is correct.

Q. What happens when there is a decrease?

A. The same thing.

Q. Is the practice of the different manufacturers all the same, that is this 25 cents per 100 pound weight increase; do they all revise their figures on the same basis?

A. I think they do.

Q. Did they when you were sales manager at any rate?

A. They did, yes.

Q. That was one of the methods, I presume, by which the manufacturers would know that prices as between manufacturers would remain the same; is that not correct?

A. I suppose it could be boiled down to that.

Q. While you were sales manager, was there ever an instance when you increased on the formula -- excuse the expression -- of 25 cents per 100 pounds and you took the regular increase, but on a decrease you did not take the regular decrease?

A. It is not that at all.

Q. In the period prior to, I think it was, January or February of 1949 or somewhere in there where you mentioned there was a redistribution of the detail work in connection with publishing prices whereby various companies took responsibility on various types of wire and cable, prior to that time did Northern Electric send out the price changes on wire and cable based on the change in copper price, that is if it was more than 25 cents per hundred weight did Northern Electric send out the appropriate price change to all the other manufacturers?

A. No, sir, we did not.

Q. Did they send out their own, then?

THE SPECIAL COMMISSIONER: Who are 'they'?

BY MR. HUNTER:

Q. The other manufacturers. I understood that as regards price changes, up until the time of this redistribution or detail work, the other manufacturers had been advised by Northern Electric as a matter of assistance doing the detail work?

A. We did not do the detail work. We figured out the price and sent it out to our own establishments across the country by telegraph.

Q. And the other manufacturers presumably did the same?

A. Presumably.

Q. In any case there was an agreement amongst the manufacturers they would use the same formula for increase or decrease, based on the American Metal Market Journal or the E. and M. J. journal?

A. If there was, it was started long before my time.

Q. Was there an understanding when you were there that was the system that would be followed by the manufacturers?

A. Well, we knew what they were doing. We knew how the price was being arrived at and anyone can analyze the copper price on the published basis.

Q. It was a uniform practice across the industry you did not adjust the prices except on an increase or decrease of 25 cents or more?

A. That is what we tried to adhere to.

BY MR. KER:

Q. That was with regard to copper?

A. With regard to copper.

BY THE SPECIAL COMMISSIONER:

Q. In answer to Mr. Hunter, Mr. Macpherson, with respect to this question of an agreement, I think I heard you say if there was an agreement it was entered into long before you came into the picture?

A. That is correct.

Q. Mr. Hunter did not ask you as to the time when an agreement was entered into. He merely wanted to know whether an agreement was entered into, to your knowledge. Was there an agreement? Whether you had anything to do with negotiating it or setting it up is not a question at the moment. I would like you to answer that question directly. If you do not know, say so.

A. Well, I do know that the prices came out the same, which implies that we were all using the same method. Does that answer your question, sir?

Q. Well, you are saying that the end result indicates that there must have been some understanding at least among the parties?

A. That is what I said." (Evidence, pp. 263-8)

S. H. R. Clish said that Northern supplied their competitors with the base price for bare copper wire. As changes occurred in this base price, revised sheets would be sent out by Northern (Evidence, pp. 521-2).

The set-up was also discussed with J. H. Fitzgerald of Phillips who confirmed what Mr. Macpherson had said:

"Q. Could you explain following the entering into of this copper agreement how you determined or how you varied your price for wire and cable, that is, manufactured wire and cable with reference to the copper base? I mean without getting into the details of the mathematics could you just explain that?

A. It was based on a weekly average of price of copper as published, I believe, the first arrangement was that the American mill market and that was basic price of copper wire bars and we charged the wire drawers that price plus the toll for rolling and there was no future buying as I

recall it at that time. In other words, they did not know the price the copper was going to be for the future. It was just for the week during which they received that copper.

Q. Then depending upon the quotation that came in, did the manufacturers adjust their prices?

A. Yes.

Q. Was there a formula, if I may use that term, or was there an arrangement between the manufacturers as to when you would increase and when you would decrease depending upon that quotation?

A. In general, yes. I would say that if the increase was under 25 cents - I am speaking of wire and cable - if the increase was less than 25 cents it would not change.

Q. That is 25 cents a hundred pounds?

A. Yes; if it were up and down, say, 15 cents then it would be increased by 25 or decreased by 25.

Q. Do I understand correctly, Mr. Fitzgerald, if there was an increase in the base copper price of 15 cents per 100 pounds that the manufacturers would adjust their price on a 25 cents basis?

A. That is correct but, perhaps, I should add that would only be material sold on a tonnage basis. Annunciator and magnet wire were sold by the pound. We would not change on our footage price.

Q. When would you change your footage prices?

A. They would lag somewhat behind because of the tremendous amount of work in getting out new price sheets.

Q. What would be the cost if the quotation on the copper, one week to another, was increased 30 cents per hundred pounds; what increase would the manufacturers take on their finished product?

A. Probably 25.

Q. If there was a decrease of 30 cents what decrease would they take?

A. Probably 25.

Q. And if there is a decrease of $1. what would take off?

A. $1.

Q. Do you remember any specific instances since the agreement was entered into where there was a decrease of $1 and where the manufacturers did not take the $1 decrease?

A. No, I cannot remember any instance of where that happened. There may have been times since the exchange has been fluctuating that we have not recognized the change because it was a change that affected the price, not the basic price of copper.

Q. You have mentioned the case of, say, 30 cents increase where you said you would probably take 25?

A. Yes.

Q. I take it from what you said whatever was done would be a uniform action by all the manufacturers?

A. Yes.

Q. How would you decide how much of the increase or the decrease you were going to take?

A. It would be discussed by phone.

Q. Who acted as the central point for the exchange of information or the pivot point?

A. I might initiate it with Northern Electric or they might initiate it with me."

(Evidence, pp. 611-14)

At a later point in his evidence Mr. Fitzgerald indicated that the price adjustment factor sheet setting out copper and lead changes would be received from Northern and that Phillips would copy it for their own price books (Evidence, p. 669).

V. N. Longtin of C. C. & F. said that he received his base metal changes from Northern and that a change in the base would affect the price of tonnage materials and power cables (Evidence, pp. 846-8). He did not, himself, make the decision as to what the base price would be as the following evidence indicated:

"Q. Are these references to American Metal Company and E & M Journal?

A. These were.

Q. And the Northern Electric Company used to send out a notice of base metal prices with each, depending whichever journal was being used?

A. We get E & M Journal as well.

Q. When there was an increase in the base metal prices, would each of the manufacturers automatically increase the price of their product by whatever the increase was in the Journal, E & M Journal, or the American Metal Company?

A. We ourselves do that.

Q. Each company?

A. No, I don't speak for each company. We do that.

Q. Regardless of how much of an increase or decrease in the base metal prices, would you increase or decrease your product accordingly?

A. That is usual.

Q. Would you have a formula or a method? Suppose it only went up 10 cents a hundred pounds?

A. That is all taken care of in Phillips new PILC book. Just add the different base metal changes. If it goes up add 25 cents.

Q. If it goes up 25 cents?

A. That is right. I don't know where to find it myself. This is based on assuming copper at 29 cents and lead at 18 cents. This is the starting point for any fluctuation.

Q. My question is, suppose an increase in copper of 15 cents a hundred pounds from one week to the next, would you reflect that increase in your copper or in your wire and cable products. That is you, your company?

A. I am not sure whether they wait until an even 25 cents.

Q. Who decides if you wait for an even 25 cents?

A. I guess that would come from Northern Electric who send figures, whether to add or deduct.

Q. You don't make any decisions yourselves?

A. We haven't done it; but we can get E & M Journal. The same thing.

Q. Suppose you do get it from them. From one week to another there may be 15 cents a hundred pounds increase. How would you reflect that in your prices?

A. Not until we receive official notice.

Q. From what you suggest then what appears in the E & M Journal has no influence? It is what is forwarded to you from the Northern Electric?

A. That is right." (Evidence, pp.949-51)

The question of base prices was also discussed with W. R. Greenshields of Triangle, in the following exchange:

"Q. Mr. Greenshields, as changes in the price of copper took place, would those changes be reflected in the price of your product, that is, the product manufactured by you?

A. They would change up or down?

Q. Yes.

A. No, not always unless it was of sufficient change up or down. At one time they were making changes of a quarter of a cent. It would affect them on the tonnage material, I would say yes, but on our footage, not in every instance.

Q. As a result of the copper agreement referred to here and the price at which copper could be bought under that agreement, is my understanding correct that that price which you paid for the rods was based on a weekly average?

A. That is correct.

Q. And that was obtained from where?

A. The Mining Journals.

Q. And market publications of the same type?

A. That is right.

Q. Who decided in your company when you were going to reflect changes in the price that you had to pay for copper rods?

A. I would.

Q. Did you have any rule of thumb or formula that you followed on that?

A. Yes, we knew the weight, let us take copper as the subject, of the different sizes, that is, 4/0 might be 6.40 pounds in the thousand feet and you would say we cannot afford to take this at one-half cent a pound and the price would have to be increased.

Q. When you increased that price did the other manufacturers increase their prices at the same time?

A. It might be a difference of two or three days.

Q. Would the increase be the same as between manufacturers?

A. Yes.

Q. If you would decide as far as your company was concerned how much you could increase it or decrease it and some other manufacturer would decide for their company, is that correct? How were you able to achieve uniformity in the increase; was there a formula you all had?

A. I go strictly from the cost of our armoured cable. There would be several items you would take cognizance of in any change, but where it is considered a change, there it is. It is copper. That speaks for itself. If the producers of copper put their prices up a quarter of a cent or half a cent immediately that price should be reflected in all tonnage material.

Q. Supposing copper took an increase of 15 cents for 100 pounds, would you under the practice that you were following increase your price?

A. No.

Q. If it was 30 cents 100 pounds?

A. It would depend entirely - for small wires and cables, no.

Q. What I was wondering is if you were making this increase on certain products at certain times and your competitors were also doing it, how was it possible for you all to take the same increase in the same product without exchanging information, or did you exchange information on how much you were going to increase your price?

A. Yes, there would be information exchanged as to the advisability of increasing your price.

Q. Did you manufacture any product other than AC or ACL on which you received price information from other manufacturers? In those cases do you take copper increases on advice received from them?

A. Yes.

Q. It would not be your own decision; it would be from them?

A. That is right, but it could be again that I have our own costs taken and I might disagree with their stand.

THE COMMISSIONER: Q. If you disagreed with their stand, could you discuss it with them or would you go on yours?

A. I would give them my reasons for my objection either up or down. On occasions I did not think it was warranted and I have said that."

(Evidence, pp. 1388-91)

F. W. Barnhouse of C. G. E. in his evidence indicated that while there were discussions in 1947 re a wire base, there had been a wire base for many years:

"Q. Mr. Barnhouse, do you remember in 1947 whether there had been negotiations between the wire drawers, the rod rollers and the copper producers with reference to a copper agreement as to firm prices vis-a-vis prices on delivery or prices at time of shipment? I show you Exhibits 227, 101, 228 and 229, and these documents may help to refresh your memory with regard to the period in question.

A. I can recall a discussion with the liaison officers of the copper producers.

Q. Do you remember an arrangement being made such as is referred to in this memo on a method of purchasing and paying for the necessary supplies of copper? Is that what came out of these various discussions and negotiations?

A. Yes, sir.

Q. Now, was the result of this copper agreement that the wire and cable companies established a common wire base from which they were able to make adjustments to certain prices automatically?

A. A wire base, yes. A long time before these discussions there had been a wire base.

Q. Yes, but as the result of the copper agreement or the discussions which took place, was a wire base established for the wire and cable manufacturers as the result of which changes in the price of copper could be reflected in the price of wire and cable products on a tonnage basis?

A. Yes, because it always has been that way.

Q. Well, was there a formula adopted in the industry, following the copper agreement, whereby on tonnage material prices of wire and cable would only be increased where there was an increase in the weekly average of copper bars of 25 cents or more per hundredweight?

A. That was the usual practice.

Q. Yes, in the industry?

A. That is right.

Q. And if it was less than 25 cents per hundredweight then prices were not advanced. Was that the practice?

A. I think so. I am not sure on that point.

Q. And similarly if there was a decrease of 25 cents or more per hundredweight then the decrease was reflected in price?

A. That is correct.

Q. And if it was less than 25 cents, then no change in prices was made, isn't that correct?

A. I am not sure. I think you are right on that point.

Q. Now, do you recall any instances where there was a decrease of a certain amount but where the prices on wire and cable products were not reduced to the same extent or proportionately? That is, where this practice or formula or rule of thumb was deviated from in the case of a decrease? Do you remember any instance of that?

A. Not off hand I don't remember any particular instance.

Q. Do you remember this rule of thumb or formula being discussed at a meeting of manufacturers at which you were present, that is, the twenty-five cent feature?

A. Not particularly, because since I have been with our Company it usually had moved in 25 cent increments.

Q. Then would it be correct to say that the only change which resulted from the copper agreements was that you used the weekly average figure appearing in one of the market journals for the weekly average price of copper? Was that the only change?

A. That is all I recall, sir.

Q. But that was a matter on which all the manufacturers agreed, is that correct, that they were going to use a certain market journal as the basis for revising their prices?

A. That was the purchasing arrangement for buying copper.

Q. Now I am speaking of the arrangement which was made with regard to changing the price - the manufacturers' price - of wire and cable products.

A. Well, the purchasing price of copper would reflect in our selling price of wire products.

Q. And from where did you receive the information on which you made your change? Was it distributed by the Northern Electric Company -- that is the changes in the price?

A. The changes in the purchase price I was informed by our purchasing division. Changes in selling price usually came from Canada Wire."

(Evidence, pp. 1615-18)

T. A. Gass of Canada Wire also explained how the base price operated:

"Q. Is this E. & M. J. average price used by the manufacturers of wire and cable for the purpose of adjusting their prices on tonnage material or was it used?

A. It was used or should be used. I advised them of the E. & M. J. average converted into Canadian funds on Thursday of every week until May 27 of this year.

Q. On tonnage material as the price of copper increased or decreased was there a direct reflection in the increase or decrease of tonnage material prices?

A. There was to the nearest one-quarter cent per pound taking into consideration the sales tax on the material as well which would be included in the price.

Q. This nearest to a quarter of a cent per pound, had that been worked out by agreement among the manufacturers?

A. It doesn't require any working out. You can decide what the nearest quarter of a cent was.

Q. Who decided it was a quarter of a cent?

A. Usually I say it would be mutually understood. On Thursday we have the price and if it was up a quarter of a cent you would automatically raise your next week's price.

Q. If it were up one-eighth of a cent?

A. No cognizance would be taken of it.

THE COMMISSIONER: Q. By your firm?

A. By my firm, and not by any other firm.

MR. HUNTER: Q. Was there ever an occasion of which you have knowledge where there was a decrease in price of copper but where the figure was not reflected to the full one-quarter cent?

A. I can recall where other factors other than the price of copper, continually increasing labour costs necessitated a difference in the price between the price of copper and the price of wire so I would say that at the same time, taking that into consideration, your assumption would be correct, that the full amount was not reflected in the reduction. Possibly, similarly, more than the increase in the price of copper might be reflected on your added rubber costs from time to time.

Q. To the extent that there was that departute from the rule of thumb of one-quarter cent per pound, did all the manufacturers reflect that change?

A. I would think so. There was also the question of changes in the sales tax.

Q. Was that done by arrangement or agreement or mutual consent, as you have used the word?

A. Acquiescence.

Q. Was that discussed with manufacturers before?

A. I think it was discussed over the phone or merely mentioned.

Q. It would have to be that way or you would not know when to go to the price?

A. On Thursday we received our E. & M. J. prices by telegram. On Thursday at noon we received the Bank of Canada official exchange rate for Canadian dollars vs. American dollars and I think, generally speaking, if the change in the E. & M. J. price was sufficient to warrant a change in price that postcards would go out of the office to 3500 people the following day and the same evening a telegram would go to all our branch houses. Any commodity like copper you have to follow the market quickly.

Q. That would be where there was a direct reflection of an increase or decrease?

A. Yes.

Q. Where these other factors come into consideration ---?

A. There would be a discussion between manufacturers by telephone.

Q. To see what was going to be done?

A. Yes, one or two, anyhow; not all manufacturers.

THE COMMISSIONER: Q. There would be a telephone conversation between the big three or the big four?

A. I don't know who they were. I might discuss it with Mr. Macpherson or discuss it with Phillips.

Q. Would you discuss it with Triangle?

A. I wouldn't.

Q. With Boston Insulated?

A. They buy bare wire and I advise them what the price is. They do not draw wire.

Q. Do you not discuss with them because you think they are small manufacturers?

A. They do not draw wire." (Evidence, pp. 1741-4)

T. J. Bell of Federal explained at some length the history of the base prices and how they were used to adjust prices:

"Q. And in adjusting any of the prices of your wire and copper products, prices for which you quote on a tonnage basis, does your Company use the E. & M. J. average figure for copper bars?

A. I can answer that to say that we did.

Q. Up until when?

A. Up until last Friday.

Q. Do you know whether the other manufacturers followed the same policy as your Company?

A. I imagine we did because prior to the war we had very easy reference to a world market price of copper and that was the London Metal Exchange. The price which we paid for our copper from week to week was established by the world market which existed on that exchange, and it was the only place in the world in which base metals were freely traded. So we had an accurate reference from day to day as to the trade price for copper. I believe in

1940 the price was controlled in Canada at a certain level and that was our Canadian price. Following the war the London Metal Exchange did not open again, and there was only one place in the world where copper had any freedom of trade and that was in New York. When the war began in Korea that exchange became a difficult one to interpret because O.P.S. regulations set a domestic price for copper, and the only copper traded freely was export copper. So our price at the time this became effective, was then based on the E. & M. J. price in the United States and it varied.

Within a few months of receiving this notification that our price was the E. & M. J. domestic price, we were again notified that it would become the export price, and we objected to that, we objected to this; but there was no point to our objection because it did not have any value. The producers of copper in this country are primarily interested in the world market rather than the domestic market, so as a result we accepted the pricing basis and it is a difficult one to understand normally because it has been very complicated over the years.

Q. Then as there would be changes in the E. & M. J. average figure, your company would adjust accordingly?

A. We would adjust our prices the following week probably. What we did, the average E. & M. J. price was the average of all the sales on the New York exchange from Wednesday or Thursday to the following Wednesday inclusive. We are speaking in retrospect.

Q. Yes.

A. Now, on the Friday following that week's previous sales, those prices would be averaged and would be available to us on Friday morning when we received the Engineering & Mining Journal, which would show the average prices. Then the price we paid for the copper we received in the plant the following week, the succeeding week, would be based on that average price, so we would naturally adjust our prices for sales in the following week.

Q. And was there on tonnage material any sort of minimum increase or minimum decrease?

A. No. Normally it would never change - no increases or decreases of less than a quarter of a cent.

Q. That would be twenty-five cents a hundredweight?

A. That is right.

Q. And if it was an increase of, say, thirty cents a hundredweight, would you adjust on the thirty cent basis or would you adjust the increase, or would it be the twenty-five cents basis?

A. Normally the twenty-five cents unless it was over the half way. We usually adopted the minimum, the closest.

Q. Did the same apply on the decreases?

A. Yes, it went both ways and it worked automatically.

Q. Was that a matter which had been discussed and agreed upon by the manufacturers that they would all use this twenty-five cent increase or decrease of twenty-five?

A. In my association with the industry I have never heard the matter discussed. It has been a problem. It has been a rule of thumb as long as I have been connected with the industry. Since copper is our basic raw material, it only follows, especially on tonnage items, that we must follow the market very closely both up and down.

Q. And the twenty-five cent rule of thumb has been in existence throughout your knowledge of the industry?

A. Yes, and I wouldn't say it was always followed because they often might go fifty cents before these changes would show in a free market. Often twenty-five cents would represent the difference in a week's trading. But in a market that has been controlled since 1940 it has seldom moved by as little as twenty-five; it has usually moved two or three cents at a time.

Q. You say sometimes they would not always go to the twenty-five cents?

A. That is right.

Q. Did the manufacturers after this E. & M. J. figure had been used as a basis, did the manufacturers all take the same increase or decrease to your knowledge?

A. To my knowledge they did. It is most important that they do so.

Q. Because it was the basis of your whole price system?

A. Yes. We were not buying copper either ahead or contracting ahead for copper. We were only able to buy day to day.

Q. Then you say to your knowledge this was not discussed or agreed upon at a meeting? Did you exchange information between manufacturers as to the amount of increase or decrease that you would take based on the E, & M. J, average figure, before adjusting your prices?

A. Yes, we did.

Q. And was that done by telephone?

A. Usually by telephone; the reason being normally it was never possible to follow the market within five cents or ten cents or twenty-five cents. So normally it was necessary to have someone to decide what the price would be and to keep track of the cumulative total

which might result in a fifty cent increase this move and the next time a seventy-five cent decrease.

Q. And who functioned in that capacity in the industry?

A. If you will give me the memo I will tell you again, but I believe it was Canada Wire.

Q. That is Exhibit 304.

A. Canada Wire.

Q. Canada Wire & Cable, and I take it then that you are referring to these memoranda, 304, which were notes of a meeting that you had made; and was that one of the matters which had been decided or agreed upon at the meeting, that Canada Wire & Cable would supply this information?

A. I believe it was in effect prior to that. You see, Canada Wire & Cable Company and Phillips Electric, Brockville, are the two suppliers of copper rods, and while their pricing arrangements are not always the same, ultimately within a two or three week period the price becomes the same."

(Evidence, pp. 1928-34)

The copper and lead base prices used by the producers of power cable were set up on July 1, 1948 and similar changes have been made by all wire and cable manufacturers to these base prices since that time and on the same dates, (Ex.329, 2CGE-1-3-47, 6012; Ex.253, 2CCF-1-1-12, 13696; Ex.380, 2CWC-1-1-1 and 3, 5326 and 5328; Ex.154, 2PEW-1-5-5, 5120; Ex.154, 2PEW-1-2-6, 5033 and Ex.132, p.P.I.L.C. No. 1.1.2.2).[1]

---

1. In addition, a check of the price sheets sent by the wire and cable companies to the Commissioner indicated that the bare copper prices were for the most part increased by amounts similar to increases in the copper base since February 1948. In March 1948 and in April 1951, however, bare wire prices were increased by amounts which bore no direct relation to the wire base and could have been brought about uniformly only by agreement among the manufacturers producing such wire. The adjustment of April 11, 1951 which was the only increase in bare copper since February 1948 which was not uniform over the whole range of sizes would appear to have been due to an increase in the "Extras" in addition to the increase in the base price.

3. Power Cables

Power cables are highly fabricated cables, heavily insulated and covered with various types of protective materials including armour. They are usually custom made to the detailed specifications of customers. While they include all the high voltage cables, for the purpose of price arrangements among the manufacturers, a distinction is made between those having a voltage below 15,000 and those exceeding this voltage. The latter are in a special category, subject to ad hoc consideration respecting pricing by the manufacturers, whereas the pricing of cables below 15,000 volts has been generally systematized and reduced to price books and folders.

The practice has been to develop a set of price books or price lists for any special materials for which there were recurring demands and for which price books or price lists had not already been established. In this way, Northern developed the power cable price book, C. G. E. prepared price lists on rubber insulated neoprene jacketted cable (RINJ) and Canada Wire established prices on pre-assembled aerial cables. These pricing books or lists were retained in the head offices for the most part and were not available to customers.

Many of the memoranda which were exchanged by the manufacturers of wire and cable for the purpose of achieving uniform prices on tender quotations were concerned with special materials for which price books or folders did not exist. When pricing folders and lists were available, the exchange of figures which the manufacturers proposed to quote was essentially a check on arithmetic.

Power cables are manufactured by C. C. & F., C. G. E., Canada Wire, Northern and Phillips. In addition Boston manufactured certain varnish cambric and braid covered or lead covered cables which were probably not regarded as power cable in the strict sense of the word although the prices and pricing procedure for which are found in the power cable folders. All of these companies had price books on power cables, all of which had been prepared by Northern, during the period prior to late 1951.

C. C. & F. first began to manufacture varnish cambric and paper insulated lead covered cable (PILC) in the fall of 1940. On October 15, 1940, K. P. Macpherson of Northern wrote T. A. Gass of Canada Wire and P. A. Timmons of Phillips, as follows:

> "Mr. Longtin was in my office last week and requested me to give him full information on Varnished Cambric Braided and Varnished Cambric Lead Covered and P.I.L.C. Power Cables. He informed me that they would be manufacturing cables of the above description up to 13,200 volts in the near future.
>
> They are at the present time installing the impregnating tanks for P.I.L.C. cables and must have purchased new testing equipment since they were only able to test 600 volt cables up until a few months ago.
>
> He had the usual story about having been forced into this field by the loss of business which he considered was primarily his.

## [illegible] Conclusion

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

I told him I did not believe that. I am quite satisfied in my own mind that it is their intention to expand to manufacture a full line of wires and cables just as soon as they can.

I think the three of us should discuss this matter Friday.

I dare say that the C. G. E. will not be long in following suit."

(Ex.110, 3PEW13-2-2, 9151)

For many years Northern had prepared cost studies on Power cables, submitted proposed new prices to other manufacturers and subsequently issued price folders to all interested wire and cable manufacturers after the prices had been agreed to by all concerned. A new set of these folders was set up in July 1948 based on copper bars at $21.50 and pig lead at $16.75. Subsequently, when tender quotations were being prepared, adjustments were made to the list prices to compensate for changes in the copper bar base and the lead pig base. These power cable price books covered paper insulated lead covered (commonly known as P.I.L.C.), rubber insulated lead covered (commonly known as R.I.L.C.), varnish cambric, armourings and subsequently control cables. The armouring folder contained prices to be added when armour was required on the various types of cable. The voltages which are covered by the power cable folders are:

P.I.L.C. -0-15,000 volts
Varnish Cambric
(a) Varnish Cambric and Braided - 0-5,000
(b) Varnish Cambric and Lead Covered - 0-10,000
R.I.L.C. (Rubber Insulated Lead Covered Cable) - 0-5,000
Control Cables - 0-500

In the varnish cambric and R.I.L.C. folders were listed prices for one, two and three conductor cables while the P.I.L.C. price book includes a fourth conductor. Most of the power cable folders included an example of how to work out the prices and the example used in each case was the same for all manufacturers. Control cables, although their prices were found in the power cable folders, it is understood, are not strictly power cables. They include cables with rubber and thermoplastic insulation and are covered with braid, neoprene, thermoplastic and lead in various combinations.

In addition to the prices, the power cable folders included lead and copper base prices, shipping weights, maps setting out the freight zones, freight rates to be used in computing the shipping charges to various destinations and short length additions and quantity discounts. As changes occurred in the base price of copper and lead, in freight rates, or other variables, revised sheets were sent out by Northern to the manufacturers of power cables. From time to time adjustments in prices were also made and these were sent to the other manufacturers by Northern in the form of revised sheets.

In order to arrive at a delivered price for any of the various types of power cable, numerous factors, some of which are indicated above, had to be taken into consideration. Accordingly, there was a possibility of errors being made either in the interpretation of pricing formulae or in the arithmetical computations involved. To avoid such errors, the wire and cable manufacturers checked with

each other the prices they had computed and proposed to quote, in respect of particular transactions.

A striking feature of the power cable price books which were introduced in 1948 was the fact that the prices contained in the books of the several manufacturers did not appear to be the same. Each company's price books showed different list prices and different price adjustment percentages to the list prices. But when the designated percentage adjustment (found in a "Price Adjustment Sheet" inserted in the price books) was applied to the list prices it resulted in the final prices of each company being identical with those of Northern, the only company whose list prices were net prices. The percentage adjustments were applied to list prices for P.I.L.C., varnish cambric, and R.I.L.C. Canada Wire's list prices for these products were subject to a 25 per cent percentage adjustment, C. C. & F. 40 per cent, Phillips 50 per cent and C.G.E. 60 per cent (Ex. 380, 2CWC1-1-78, 5403; 2CWC1-1-129, 5454; Ex. 154, 2PEW 1-6-4, 5221; Ex. 154, 2PEW1-1-4, 4967; Ex. 154, 2PEW1-5-3, 5118; Ex. 331, 2CGE 1-4-15, 6081; Ex. 330, 2CGE 1-1-4, 5695; Ex. 330, 2CGE 1-1-78, 5769). All these apparent differences occur despite the fact that the price books were originally set up and revisions subsequently prepared by Northern for its own use and for all the other manufacturers of power cable.

As indicated above, the evidence shows that until the fall of 1951, Northern had prepared the price sheets and revisions for the power cable price books and circulated these sheets to the manufacturers engaged in the production of power cable. A Master Book Price Mailing Index was found in the files of Northern, which contained a card setting out the distribution of these folders as follows:

"POWER CABLE FOLDER RECIPIENTS

| RECIPIENT | ARM. FLDR. | AERIAL CABLE | R.I.L.C. | V.C. | P.I.L.C. | CONTROL CABLE |
|---|---|---|---|---|---|---|
| MASTER | 1 | 1 | 1 | 1 | 1 | 1 |
| K | 2 | 2 | 2 | 2 | 2 | 2 |
| L's | 2 | 2 | 2 | 2 | 2 | 2 |
| L'n | 3 | 3 | 3 | 3 | 3 | 3 |
| F | 3 | 3 | 3 | 3 | 3 | 3 |
| B | 2 | 2 | 2 | 2 | 2 | 2 |
| A | - | - | - | | (V.C. - & B. only)" | |

(Ex. 146, 3NE16-2, 4566)

S.H.R. Clish of Northern identified "K" as Miss Kinsella of Canada Wire, "L's" as L. G. Lumbers of Canada Wire, "L'n" as V. N. Longtin of C. C. & F., "F" as J. H. Fitzgerald of Phillips, "B" as F. W. Barnhouse of C. G. E. and "A" as G. W. Arnold of Boston. Pre-addressed envelopes bearing the names of the parties identified by Mr. Clish were found with the Master Book Price Mailing Index in the files of Northern.

In identifying the distribution card Mr. Clish said that the information sent out after 1950 differed somewhat from that indicated by the card. He was referring to the allocation in 1950 among the several parties of the work pf preparing cost studies and prices (Ex. 304). Under that arrangement Northern

was no longer to do everything and C. G. E. took over varnish cambric cables, Phillips undertook P.I.L.C. and Northern continued with R.I.L.C., control cables and armouring. With respect to power cables, the new distribution of work did not take place immediately. It was not until October 1951 that Phillips put out a new price book on P.I.L.C. and more recently Canada Wire has also prepared a price book on this commodity. Northern continued to issue prices on varnish cambric although C.G.E. did send out some price studies on this type of cable early in 1952 for consideration by the other manufacturers. The complexity of the make-up of the power cable price books probably delayed the implementation of the plan worked out by the manufacturers in January 1950.

Whereas the Northern price books on power cable had not been available to purchasers, the new Phillips P.I.L.C. price book, to which no percentage adjusment was applicable, was distributed to their customers partially to assist contractors and utilities in preparing costs for particular projects. Canada Wire subsequently prepared and distributed a new price book on P.I.L.C. which, while based on the Phillips' prices, was in a somewhat different form. There was, therefore, both a Phillips and a Canada Wire price book in use and as changes occurred price revisions were sent out by both companies. Canada Wire's price book also included prices for armouring.

Northern's power cable price books were set up in July and August, 1948 and were the first new set-up on power cables since de-control. A meeting of the group was called for August 19, 1948 and the agenda included the subject "Power Cables" (Ex. 99, 2BIW11-12, 9216). The same subject was on the agenda for a meeting of March 2, 1949 (Ex.99, 2BIW12-1, 9219) and another of August 17, 1949 (Ex. 99, 2BIW13-2, 9226). The price book on control cables was set up on December 27, 1949 and the prices, based on copper bars at $19.40 and pig lead at $15.50, were to be effective October 5, 1949.

Certain power cable price books were identified by various witnesses as having been prepared by Northern (Ex. 132, Evidence, p. 530; Ex. 154, 155, Evidence, pp. 625-6; Ex. 253 and 254, Evidence, pp. 852-3; Ex. 296, Evidence, pp. 1294-5; Ex.330, Evidence, pp. 1535-8; Ex. 380, Evidence, pp. 1820-1).

The practice of having different percentage adjustments continued until the fall of 1951, when it was discontinued. When the percentages were dispensed with on R.I.L.C., one of the documents pertaining to the change referred to the practice as a "camouflage adjustment". Mr. Borden was questioned about the meaning of this expression as follows:

"Q. I wonder if you would refer to Exhibit 126, Item 5 on the first page which states:

> 'The general make-up of the folder will not change but it may be well to have approval of all on the following; price adjustment Sheet #1.1.2. which contained different percentage additions to List prices for camouflage purposes will be set up showing "NIL" under all voltages and sizes.'

Would you explain what is meant by this expression 'for camouflage purposes'?

A. I do not know whether you took that up with Mr. Macpherson or not. These percentages which were handled in one case at 10 and in another case - I don't particularly like to deal with it because it is back beyond my time.

Q. You mean when you took over as Sales Manager these percentage additions to list price for camouflage purposes did not appear?

A. They were there.

Q. Supposing you tell us about it from your own experience?

A. As a matter of fact, it is one of the things that I have found kind of ridiculous. I do not like to criticize the predecessors but there was a scheme devised that one manufacturer would have a price that would work out to $1 with no discount and another person would have a price at $2 with a 50% discount. That appears to have been the system and I believe it is still in effect. It is just plain ridiculous as far as I am concerned."

(Evidence, pp. 499-500)

The evidence of other witnesses about these percentage adjustments, and the reason for their use is detailed below.

K. P. Macpherson of Northern testified as follows:

"Q. When these new books were prepared, with different figures and different discounts, were they separate books for each manufacturer?

A. Yes.

Q. And were the separate figures and separate discounts different for each manufacturer?

A. Yes.

Q. And were those figures agreed upon by the manufacturers before they were published by you?

A. My recollection is that the basic figures were.

Q. Could you tell us the purpose of this?

A. There was no purpose behind it -- to make them look different, perhaps.

Q. To make them look different to whom?

A. Each one would be working from a book of their own. They had their own employees.

Q. In the figures which were prepared for Northern Electric, that is your own, were there any figures as discounts, or did you work on a straight list price with no factor of adjustment?

A. There was a factor of adjustment in them all for the daily variation of copper and lead.

Q. Are there factors of adjustment in other than Northern Electric which are in addition to the factor of adjustment for copper and lead?

A. I think there was no discount applied to ours.

Q. That is to Northern Electric?

A. Yes.

Q. If you take the figures which appeared in these other lists, that is lists of other manufacturers which you prepared and sent out with the discount figure; if you corrected those figures with the discount, was the net result the same from company to company?

A. I believe so.

Q. And that was the purpose of it, isn't that correct?

A. The purpose of it was to arrive at the same price.

Q. But the purpose, as you said earlier, was to make it look different?

A. That is so." (Evidence, pp. 160-62)

J. H. Fitzgerald, a representative of Phillips, gave this evidence:

"Q. But I would like to refer you to the sheet coded 2PEW1-5-3, Serial 5118, which is entitled, 'Price Adjustment Sheet'. Could you explain what is referred to as the percentage adjustment?

A. The list prices are adjusted by that percentage to arrive at the basic price.

Q. That is the price at which you would quote?

A. Yes, and other adjustments as well, but that is the first adjustment.

Q. Is the percentage indicated on this sheet to which I have referred the percentage adjustment which is to be applied against the list price?

A. That is correct.

Q. Does this percentage adjustment vary from manufacturer to manufacturer?

A. Yes.

Q. Am I correct in my understanding when you apply the percentage adjustment against the list price in each manufacturer's book that you would eventually come out with the same end price?

A. You should.

Q. Could you tell us why this procedure was adopted, or was it adopted, before you came into the picture?

A. No, it was not adopted before I came into the picture, but I couldn't tell you why. It was just one of those things that somebody thought it was a good idea.

Q. In your present PILC folder, Exhibit No. 133, is there a percentage adjustment?

A. No, there is not." (Evidence, pp. 626-7)

The evidence of Miss Martell of C. C. & F. was:

"Q. Could you explain what is meant, or the purpose of this price adjustment sheet? I notice on this particular one under the price adjustment the word 'nil' appears. To your knowledge, did there used to be a percentage adjustment in there?

A. Yes, there was at one time.

Q. What was that?

A. The last percentage adjustment was 40 per cent.

Q. Where did you receive the information from which these sheets were prepared?

A. This sheet you mean here?

Q. Yes.

A. That came from Northern Electric.

Q. You said the last percentage adjustment was 40 per cent. Did they print it on the sheet they sent you? The 40 per cent — was it printed on?

A. Yes.

Q. And am I correct in my understanding, that when you took the list prices and applied the 40 per cent, that you would come out with an answer that would be the same as the other manufacturers were using?

A. I believe so.

Q. To your knowledge, was that the purpose of the adjustment?

A. I couldn't tell you." (Evidence, pp. 982-3)

The documentary evidence with respect to agreement on power cable prices extends back as far as 1938. In that year Northern prepared suggested prices for P.I.L.C., R.I.L.C., and varnish cambric and circulated them to T. A. Gass of Canada Wire and P. A. Timmons of Phillips. The three companies were the only manufacturers producing these cables at that time (Evidence, p. 1683). The following covering memorandum dated February 18, 1938 was identified by Mr. Gass:

> "As promised you last Tuesday, I am attaching the cable prices discussed and agreed to."
>
> (Ex. 26, CWC42-1, 2692-2701)

The phrase "and agreed to" had been added in handwriting and Mr. Gass of Canada Wire identified the handwriting as his (Evidence, p. 1682) and said that it signified his agreement to the prices (Evidence, p. 1683). Mr. Gass was questioned further about the agreement reached at this time:

"Q. Is this the type of information which was exchanged between manufacturers in connection with prices or changes in price?

A. These are price studies based on prices that had been made up in our company and other companies have made them up and endeavoured to arrive at a satisfactory price on checking certain price lists that were available. As you will notice, in these price studies there are only spot sizes here and there; it is not in a general price list, just different items taken from a price list and checked as to cost.

Q. Then, I take it from what you said, that your company would check this against their costs or had previously done so?

A. Had previously done so and agreed."

(Evidence, pp. 1683-4)

Mr. Macpherson with reference to the same document was questioned as follows:

"Q. Were you in the habit of sending out price sheets on cable prices for them to study?

A. That has been done. They have sent them to us for study.

Q. With what object?

A. The object of setting up a fair price.

Q. What do you mean by a fair price?

A. One with a reasonable amount of profit in it and one that is not detrimental.

Q. Reasonable to whom?

A. To people who are going to buy.

Q. And as manufacturers did you feel you were in the best position to determine what was reasonable to the people who were going to buy?

A. We have a broad knowledge of what things are worth and what represents a fair price and what would be an unfair price.

Q. And that was the purpose of sending out cable prices for study to other manufacturers, for the purpose of arriving at what the manufacturers thought would be a fair and reasonable price to the customers?

A. Right.

Q. Did you also have regard to what would be the profit element to the manufacturers?

A. Very definitely.

Q. You said this document might have been sent out for one or two reasons, one for the purpose of having the other manufacturers or competitors studying these prices, and the other thing you said, I think, was it might be new prices you would be putting into effect?

A. New prices the group would be putting into effect.

Q. At any time these prices were sent out with the purpose of putting them into effect, it would be as a result of a study or agreement which would have been made by the group?

A. That is correct unless I was asked to set some specific thing for a member of the group that asked that to be done. If it concerned him only, it would be done. If it concerned other people, they would be consulted."

(Evidence, pp. 84-6)

The mechanics by which price agreement was achieved in the industry were outlined by Mr. Macpherson:

"Q. In some cases they would send price sheets out to the manufacturers which they had prepared and say, 'Here are the cable prices'?

A. Correct.

Q. Which is exactly the way you appear to have done in Exhibit 26?

A. Yes.

Q. And you would receive a copy of those prices?

A. That is correct.

Q. And all the other manufacturers would?

A. That is correct.

Q. Were these prices put into effect by your company when received?

A. In most cases, yes. If we wanted to argue about some of them we would argue about them.

Q. Was it the practice in sending out these price sheets to allow two or three days before they went into effect in order to have the other manufacturers raise such complaints as they might wish to?

A. No, I don't think so.

Q. In the case where you received certain prices prepared by, say, Canadian Wire and Cable, and in a case where you might not agree with the figure which they had prepared, what action would you take?

A. I would discuss the matter with them.

Q. With a view to what; having them change their figure, is that what you were after?

A. That was what was discussed.

Q. In discussions with them would you do that by memoranda?

A. Perhaps not.

Q. Would you do it by telephone call?

A. It could be done by telephone discussion. It could be done by a visit.

Q. If you were objecting to some of these prices prepared by one of the other manufacturers and you were raising your objection through a memorandum, did you send that memorandum on a circulating system to those other companies which would be concerned?

A. I would think so, yes.

Q. Do you remember doing it?

A. In instances I remember doing it."

(Evidence, pp. 87-88)

As noted above, the preparation of price studies and the circulation of price information among the manufacturers on varnish cambric cables had been taken care of by Northern for many years but in January 1950 this task was given to C. G. E. Various witnesses, however, said that Northern was still preparing and

issuing revised price sheets on varnish cambric (Evidence, pp. 934-5, 1292-3, 1296, 1575-6, 1831-2). F. W. Barnhouse of C. G. E. was asked about the present status of the pricing of this product:

"Q. Do you know whether to-day Northern Electric are still supplying price information on varnish cambric?

A. I don't think so.

Q. Who is?

A. We are supposed to, but we have not issued anything recently, so I suppose we are still using Northern Electric information.

Q. You say, 'We are supposed to but we have not issued anything recently'. Well, have you issued anything on varnish cambric, that is, any price list on varnish cambric?

A. Not issued any price list.

Q. Then am I correct that you are presently making studies on varnish cambric, cost studies?

A. We have made cost studies.

Q. And when you say you are supposed to be issuing it, are you about to start issuing price information on varnish cambric?

A. I don't think so.

Q. Well, when you say you are supposed to be issuing it, are you referring to the allocation which was made and to which you have made earlier reference, that is, between manufacturers?

A. That is correct.

Q. That is why you say you are supposed to do it?

A. Yes." (Evidence, pp. 1575-6)

T. A. Gass of Canada Wire also stated that C. G. E. was supposed to prepare the prices on varnish cambric (Evidence, pp. 1709-10).

J. H.Pryce of Canada Wire, in a letter dated March 3, 1950 to the branch offices and other personnel of Canada Wire, announced the introduction of a scale of quantity discounts for power cable covering P.I.L.C., varnish cambric, lead and braid covered and R.I.L.C. The quantity discounts ran from 2½ per cent for lengths of 1,000 to 1,999 feet to 8½ per cent for lengths of 10,000 feet and over and supplemented the short length additions which previously had been in existence. In his letter Mr. Pryce stated that these discounts were to be effective immediately (Ex. 376, EWC 2-52, 4622). L. G. Lumbers of Canada Wire testified regarding these discounts as follows:

"Q. Do you remember whether on or about March 3,1950, a quantity discount on the products indicated was adopted by all the wire and cable manufacturers?

A. Yes, it was.

Q. Was that a matter which had been discussed at a meeting of manufacturers?

A. Yes.

Q. Which you attended?

A. Yes.

Q. As a result of the discussions was it agreed to adopt this quantity discount?

A. Yes, it was." (Evidence, pp. 1787-8)

These quantity discounts appeared in all the power cable price books prepared by Northern and formed part of the pricing information distributed to the other manufacturers. They were also included in the Phillips and Canada Wire price books subsequently issued to customers and to other wire and cable manufacturers.

On July 6, 1950 S. C. Moore of Automatic's Toronto office sent the following note to J. H. Fitzgerald of Phillips:

"We are experiencing difficulty in pricing V.C.D.B.cable in that our price is always high. In computing our price we take the list price plus extra for braid then add percentage adjustment. Pricing instruction in front of V.C. folder para 9.2 indicate this is the proper procedure. On the other hand if we add percentage adjustment before braid addition we are in line but we are not following the prescribed routine. Please advise if we should change our method of pricing. This only applies when double braid is involved."

(Ex. 168, PEW5-8, 2946)

On this memorandum there was a pencilled computation of varnish cambric prices which included a 50 per cent adjustment to the list price, the percentage adjustment figure applicable to Phillips gross prices for varnish cambric to bring them into identity with those of other manufacturers. J. H. Fitzgerald was asked to explain what the problem was and answered as follows:

"A. I wanted more guidance as to the price. Apparently, they had been told that they were high on a quotation.

Q. This percentage adjustment which was referred to, is that the same type of percentage adjustment we were talking about earlier this morning with regard to the PILC power folder?

A. Yes." (Evidence, p. 651)

In the fall of 1951 Northern prepared price revisions on RILC power cable. D. C. Borden of Northern was shown Exhibit 126, which appeared to set out proposals for adjusting RILC prices, and he identified it as having been prepared by S. H. R. Clish of Northern. Mr. Borden was asked what had taken place at this time with respect to RILC prices:

"Q. Were these prices increased by 13% to cover 11% increase and 1.85% sales tax increase?.

A. Yes, the prices were increased. I do not know whether this was the final formula or not, but there was an increase in rubber insulated cable.

Q. So that after certain price studies had been made by Mr. Clish were the results of these studies discussed with the other manufacturers?

A. Yes.

Q. And were the new prices, that is, the increased prices, arrived at after these discussions with the other manufacturers and an agreement reached as to the new prices?

A. It was like some of these other negotiations. The general principles were talked about, and this is a hypothetical case because I don't know what actually happened in this particular one. There would be general discussion as to whether the profit on this family as Clish thought was adequate and an agreement would be reached that it is or is not and the industry is felt out whether cost changes justified a change in the price level."

(Evidence, pp. 491-3)

J. H. Fitzgerald of Phillips recalled that the prices of R.I.L.C. had been reviewed in the fall of 1951 and that Phillips had been consulted by Northern with regard to the proposed prices. He also indicated that where basic changes in the price of R.I.L.C. were contemplated, Northern would discuss the matter with the other manufacturers including Phillips (Evidence, pp. 658-9).

There was further documentary evidence to indicate that Northern was preparing price revisions on R.I.L.C. in the fall of 1951. One document in particular, found in the files of Northern, referred to the R.I.L.C. set-up as being acceptable to the other manufacturers and indicated that Northern was expected to take the lead in issuing a customer's folder on R.I.L.C. (Ex. 145, 3NE7-5, 4398; Evidence, pp. 553-5).

Another such working paper, headed "Proposed Price Increase - R.I.L.C. Folders", was found in the files of Northern. This sheet was dated October 17, 1951, and attached to it was a small piece of paper bearing the word "Fitz" (Ex. 144, 3NE7-2, 4389-93). S. H. R. Clish of Northern said this referred to J. H. Fitzgerald of Phillips and that it would indicate the prices would have been discussed with him (Evidence, pp. 552-3).

A pencilled memorandum re R.I.L.C. prices was written on October 17, 1951 and M. R. Macdonald of Northern identified the writing as his own (Ex. 149, 3NE7-7, 4401-2). The sheet appeared to set out the procedure for obtaining approval of other manufacturers and issuing new prices. It was suggested that the R.I.L.C. prices be mailed to C. G. E., Canada Wire and C. C. & F. for their approval. Federal and Boston had been included but later appeared to have been struck out. Reference was made to the P.I.L.C. price book which had been issued on October 1, 1951 advising that prices would be effective October 9, 1951. Mr. Macdonald's evidence was:

"Q. At the top right hand corner it says: 'Clear with Fitz. Fitz. will clear with Barnhouse and Pryce.' Who is Fitz., Pryce and Barnhouse?

A. Mr. Fitzgerald of Phillips, and Mr. Pryce of the Canada Wire and Cable, and Mr. Barnhouse of Canadian General Electric.

Q. Can you explain what you were to clear with these gentlemen?

A. Rubber insulated prices.

Q. Were changes being made in RILC prices at this time?

A. Yes.

Q. Were you discussing these changes with them?

A. We had discussed them with them.

Q. Had you prepared certain adjustments or changes to these prices, or had they prepared them or who had?

A. To the best of my knowledge we prepared them. There is a little doubt in my mind there, but I am reasonably certain they were prepared by us.

Q. Subsequently was an agreement reached between Northern Electric, Phillips Electric and Canada Wire & Cable and the Canadian General Electric as to what these prices should be?

A. Yes." (Evidence, pp. 581-3)

A further pencilled memorandum dated November 9, 1951, also in Mr.Macdonald's handwriting, indicated that Canada Wire had agreed to the set-up on the R.I.L.C. folder and that it was "O.K. with Phillips" (Evidence, pp. 583-4; Ex. 150, 3NE7-3, 4394). New prices were subsequently put into effect on November 19 and 20 (Exhibits 132 and 253). The percentage adjustment system was not used this time, all manufacturers using net prices.

On November 19, 1951, S. H. R. Clish of Northern sent out the following instructions to the personnel of Northern (Evidence, pp. 548-9) as to the use of these prices:

"Effective Nov. 19/51, new Power Folder prices are to be used on all quotations to customer on RILC Power Cables."

(Ex. 143, 3NE7-1, 4386-7)

New specifications for P.I.L.C. were also worked out in the fall of 1951 (Evidence, p. 529) and it was arranged that Phillips would prepare a new price book for this product (Evidence, pp. 623-47, 425-6). This was issued on October 1, 1951 by Phillips, the new prices to be effective on October 9, 1951. The price book was sent out both to customers and the other manufacturers with a covering letter written by the assistant of T. A.Lindsay of Automatic who signed on behalf of Mr. Lindsay. This letter indicated the manner in which the book might be used:

"The pricing of any power cable is a fairly involved calculation and due to the number of changing factors and the way in which they are applied, it might prove difficult for one not familiar with them to apply them in the correct manner. It is very desirable, therefore, that the prices given in this book be used for estimating purposes only, and we would ask that you contact our nearest branch office for a firm quotation, when necessary."

(Ex. 202, 2CCF5-2, 6386)

Although Mr. Lindsay said in evidence that he was not aware that copies of this price book had been sent to their competitors (Evidence, pp. 739-40), copies were found in the files of other companies (Exhibits 133 and 329; Evidence, pp. 529-35, 622-5, 1002-3, 1535-8).

The new volume was taken into use by Canada Wire, C. G. E., Northern, Phillips and C. C. & F. It superseded the previous price book prepared by Northern except where cable was required to the specifications listed in the old book (Evidence, pp. 529-30). As adjustments were made to this new price book, Phillips sent out revised sheets to all parties. The documentary evidence after this date did not include further revisions by Northern for their old price book and Miss Martell testified that she no longer received revisions from Northern (Evidence, p. 981).

In a memorandum to the other wire and cable manufacturers on November 16, 1951, Phillips advised that special instructions would shortly be issued with respect to the new P.I.L.C. folder (Ex. 138, 3PEW7-1, 8943). Copies of these instructions, which were found in the files of Phillips (Ex. 174, 3PEW7-4 and 7-5, 8948-54; Ex. 141, 3PEW7-2, 8944-5; Evidence, pp. 660-1), set out the procedure to be followed in working out the prices. These instructions were intended to be used when preparing prices from the Phillips folder (Evidence, pp. 544-6).

As late as December 1951, Northern prepared price information on varnish cambric. S. H. R. Clish of Northern sent out two memoranda re varnish cambric prices on December 11 and 12, 1951 (Evidence, pp. 661-2, 1014-5). The first memorandum also provided for the removal of the percentage adjustment figure on varnish cambric:

"We are forwarding, herewith, several Varnish Cambric Price sheets and would ask you to incorporate them in your Price Book along with sheets forwarded to you a day or so ago, destroying the existing sheets in the folder in your possession. You will note that we have included in the attached group of sheets, Page 1.1.3 'Percentage Adjustment Sheet' showing Nil under Percentage Adjustment. When using these new sheets it will no longer be necessary to make any percentage adjustment, as now the list price contains any adjustment previously required."

(Ex. 139, 3PEW8-7-2, 8970)

Mr. Clish said that the percentage adjustment was discontinued at this time because it had no significance (Evidence, p.540). The second memorandum advised recipients to continue adding 1.85% Sales Tax until list prices on all price sheets had been changed to include the 10 per cent sales tax (Ex. 139, 3PEW8-7, 8969).

By the pricing allocation made in January (Exhibit 304) varnish cambric prices were the responsibility of C. G. E. Up until early in 1952, however, Northern had continued to make studies and issue price revisions on this product. On January 24, 1952, F. W. Barnhouse of C. G. E. sent out the following study and memorandum re varnish cambric cable prices (Evidence, p. 541):

"We are attaching information concerning a study made on V. C. Braided and V.C.L.C. cables.

You will note that for the purposes of the price study a 5% exchange rate was used. In view of its appreciation in recent weeks some of the proposed price increases are not as great as might be expected from the data presented.

Although our price study covered a considerably broader range, we are only attaching three sheets to indicate the present relative prices.

It would be appreciated if you would review this data and advise your comments at your earliest convenience in order that we may start our revision."

(Ex.140, 3PEW5-18, 8876-81)

In addition to replies received by telephone to this memorandum (Evidence, pp. 1579-81), Canada Wire replied as follows by memorandum on February 7, 1952:

"With reference to B's Memo of January 24th we have calculated prices on various sizes and voltages of cable using the method outlined.

While this method is agreeable to us we would prefer to see the prices brought more in line with the U.S. landed prices listed."

(Ex.140,3PEW8-8-7, 8977)

In response to this suggestion, new prices were worked out by C.G.E. and circulated to the other interested manufacturers with the following memorandum dated February 18, 1952, which stated in part:

"Further to data presented on January 24th we are attaching a summary of revised American and Canadian V.C. cable prices.

Shortly after our original study was completed American prices changed and it was felt desirable that a new study should be undertaken. This has been completed and suggested increases are listed on the attached sheets. It is proposed that these increases supersede those put forward on January 24th. . . ."

(Ex. 140, 3PEW8-8,8971-6)

In the above memorandum, C. G. E. set out the formula used to determine the American landed prices and asked for the comments of the other manufacturers. In his evidence, F. W. Barnhouse said that price revisions on varnish cambric were not yet under way and that they were still using prices prepared by Northern (Evidence, pp. 1579-81). S.H.R. Clish of Northern testified that he had not replied to C.G.E.'s memorandum of February 18th and that Northern was checking its costs to see if the proposed price increase was warranted. When he was asked why C.G.E. would make such a price study at this time on a product previously taken care of by Northern, Mr. Clish replied as follows:

"A. The other manufacturer has better contact with the availability of American prices on this particular product and he has made, in all probability, a study here as you notice in the contents where he is using American prices. It is a product that has to always take the American prices into consideration but to always be sure that the price to our Canadian customer is lower than the lowest American imported prices, and that is what the Canadian General Electric are making a check into, knowing at the same time that there has been rising costs independent of raw materials and feeling that something should be done about Varnished Cambric."

(Evidence, p. 542)

J. H.Fitzgerald of Phillips confirmed that C. G. E. was responsible for preparing price information on varnish cambric but said:

"A. . . . I believe that the Canadian General Electric have not yet come out with anything concrete on this and the books that were originally established by Northern Electric are still in force."

(Evidence, p. 663)

F. W. Barnhouse said that "prices on varnish cambric have not been distributed for some time, except changes in copper and lead" and that any changes of that nature which had been made, or which would subsequently be made, would have been distributed by Northern (Evidence, pp. 1624-5).

Price studies and revisions were also being made on control cables and on March 21, 1952 the following memorandum was sent out by Canada Wire (Evidence, pp. 459-60, 1582-3).

"As advised in our recent telephone conversation with M's office, we propose adding list prices for Control Cables to our new Power Cable Price List Folder. We have calculated these prices from the previous lists, making adjustments for $21.50 Copper and $17.50 Lead, plus an additional 1.85% for sales tax.

We are enclosing a set of the prices we propose listing and, unless we receive your objections to these before Wednesday, March 26th, we will assume they meet with your approval.

It will be noted on the Braided type we propose quoting the same prices for P.V.C. as for Rubber Insulated, which we trust will also be quite satisfactory."

(Ex.116, 3PEW5-24-2 to 7, 8894-9)

Attached to this document was a pencilled note expressing the Phillips views with respect to the memorandum.

While Northern was responsible for the preparation of price information on control cables (Exhibit 304), these proposed prices were prepared by Canada Wire for inclusion in their new power cable price book (Evidence, pp. 667-8) and the adjustments were designed to meet the new specifications. Price revisions on control cables were subsequently adopted.[1] J. H. Fitzgerald of Phillips said that his company agreed to the revisions (Evidence, pp. 667-8).

Mr. Barnhouse was referred to the above memorandum and he admitted that agreement on prices by the manufacturers was accomplished by the exchange of memoranda of this type:

"Q. And this indicates that these proposed prices were being submitted for your consideration and if there were no objections that they would be adopted, is that correct?

A. That is what it says, sir.

Q. And do you still suggest that there is no agreement as between manufacturers on the prices?

A. I suppose when you don't take exception you are agreeing, one way or the other. Normally we would not have enough data accumulated to comment too quickly. At a later date if we found prices too high we would carry on discussion as to changes.

Q. Wouldn't you say from the various documents that we have looked at to-day, that it is contemplated that contrary-minded comments might be received and that it is also contemplated that proposed prices would not be put into effect if there are objections? Wouldn't you say that that was a fair conclusion to draw from the type of wording that has appeared in these various memoranda that we have considered?

---

1. Canada Wire return - control cable price lists.

A. I would say it is a good understanding of the mechanics."

(Evidence, pp. 1582-3)

In the spring of 1952 Canada Wire issued its new P.I.L.C. power cable price book (Evidence, pp. 1836-8, 1621). The book was similar to that issued by Phillips but, according to some of the witnesses, was set out in a more useable form. The prices in both books were identical for similar specifications. Copies of the Canada Wire power cable price book were sent to the competitors of Canada Wire and were subsequently used by them in preparing price information on P.I.L.C. cable (Evidence, pp. 1002-3, 848-52, 981, 1535-8). As changes occurred in the prices or specifications, revised sheets were sent out by Canada Wire to holders of its price book.

Steps were taken to correlate the specifications listed in this power cable book with those in the Phillips price book. On March 25, 1952 Fitzgerald of Phillips sent out a memorandum setting out some differences he had noted between the two price books with respect to insulation and lead thicknesses (Ex. 123, 3NE5-2, 4362-5 and Ex. 178, 3PEW5-19, 8882-3; Evidence, p. 668). Some changes were subsequently made in the Canada Wire folder following the receipt of this document (Evidence, p. 1849).

At the time of the hearings it appeared that the manufacturers of wire and cable were using power cable folders for which the price information was being prepared by Northern except for P.I.L.C. which came from two sources - Phillips and Canada Wire.

4. Tenders

During the period with which this inquiry is concerned considerable quantities of wire and cable were sold directly by the manufacturers to government departments, crown companies, railways and airlines, municipal utilities, electrical power and distributing companies and other large users. This applied to practically all power cables and other special types of wire and cable and to a substantial quantity of standard wires and cables. These buyers usually requested tenders on specified materials, generally from more than one manufacturer. Before submitting tenders to these customers, the manufacturers have usually advised each other by memorandum or telephone of the prices they proposed to quote. When differences existed, further discussion or exchange of memoranda has taken place and a uniform price arrived at. This system has resulted in the submission of identical prices by the manufacturers to their customers in virtually all cases when tenders were called.

The exchange of pricing information on tenders was designed to ensure that prices quoted by all wire and cable manufacturers would be identical. It involved checking the computation of prices on the materials for which price books and price lists already existed or establishing prices on special products where they had not already been adopted. In the latter case a further exchange of views was sometimes necessary to reconcile differences in the prices worked out by different manufacturers.

The documentary evidence indicating that pricing information was exchanged in respect of tenders consists mainly of unsigned memoranda on plain pieces of paper with no letterhead. Initials

have been used to designate addressees in the manner described in Section II of this statement. These memoranda were mailed in envelopes marked "personal" and in many cases the source could only be determined by the envelope in which the memorandum was sent (Evidence, pp. 432-5). Most witnesses testified that the system had been in effect for many years, had continued up to the time of this investigation, and that its purpose was to achieve uniformity in prices submitted on tenders. The documentary evidence begins with Exhibit 398, which is a group of documents applicable to the period 1919 to 1926, similar in form and content to those referred to below.

K. P. Macpherson of Northern sent a memorandum, with reference to the Radio Corporation, Limited, Winnipeg, to Messrs. Gass, Balfour, Keenan, Arnold and Smith on May 12, 1933, in which he stated in part:

> "The following prices are being quoted to the marginally noted customer for their 1933 requirements. Delivery of material is to be made within six months from date of order."
>
> (Ex. 7, 2BIW21-209, 12115)

A similar memorandum was sent by Mr. Macpherson to the same parties on August 25, 1933, in which he set out the amount his company was quoting to a customer on that day (Ex.8, 2BIW21-132, 11970). Again, on August 4, 1936, a document signed "M" gave the amount of a quotation made on that date to the Corporation of Brockville (Ex. 11, 2BIW22-256, 11069).

J. G. Smith of Federal, in a memorandum dated February 22, 1938, to Messrs. Macpherson, Timmons, Leary, Gass and Arnold, outlined his understanding of the practice prevailing in the industry at that time with respect to tender quotations:

> "It is our understanding that when a price is to be quoted, other than that in our regular set up, it is usual to take this matter up prior to the price being quoted.
>
> G. states in his letter that our memo did not arrive early enough. Other interested parties received other copies early enough for discussion, and I might state that we replied to G's memo on the 18th instant, the date upon which his memo was received."
>
> (Ex. 391, 2BIW26-29, 10573)

In a memorandum dated May 9, 1938, T. A. Gass of Canada Wire informed P. A. Timmons of Phillips that the Canadian Comstock Company Limited, working for the City of Toronto Water Works, had approached Canada Wire for price concessions with the promise of placing its entire order with them. Mr. Gass wrote that he had heard that Comstock had been instructed to divide the business and that Canada Wire had declined to make any price concessions. The prices which Canada Wire proposed to quote for this tender were enclosed and commented upon as follows:

> ". . . If you are in agreement with these prices as absolutely net, I would appreciate your advice in Wednesday morning's mail, if possible. . . ."
>
> (Ex. 234, 3PEW12-22, 12-24-4,9142-5)

In one instance when a Canadian company asked for quotations from American wire and cable manufacturers the request was referred back to a Canadian manufacturer and the usual exchange of pricing information took place before quotations were submitted. The situation was outlined by P. A. Timmons of Phillips in a letter dated February 4, 1939 to the president of Phillips - T. W. Brackinreid:

> "It has come to our attention that the Northern Telephone Company are requesting American manufacturers to quote them on Lead Covered Telephone Cable. They sent their inquiry to the General Cable Corporation only, who in turn advised the Northern Telephone Company that they were referring this inquiry to their Canadian connection. When G. got it he sent it along to M. and M. has promised me that he will check with us before quoting G. Gass has also promised to show me a copy of the inquiry. Will you, therefore, be good enough to warn Mr. Simpson to watch any memos that may come in from the NEC on Lead Covered Telephone Cable and make sure that the prices are in line with what we would usually quote for this customer."
>
> (Ex. 243, 3PEW12-6, 9109)

Mr. Timmons again wrote to Mr. Brackinreid on June 14, 1939 with regard to a plan designed to allay any suspicions which the Department of National Defence might have had because of the identical prices submitted by the manufacturers:

> "It has been suggested by our friends that in view of the fact that the Purchase Board in Ottawa may become too inquisitive in respect to agreed prices being quoted for the Department of National Defence, prices should be staggered. In other words, the business should be allocated. This suggestion is made for quotations valued at $1,000.00 and over.
>
> Messrs. Macpherson and Gass are taking this question up with their principals and intend to be in a position to discuss this matter at the next Manufacturers Meeting, which will be held the week of July 10th.
>
> Your comments on this suggestion will be appreciated."
>
> (Ex. 245, 3PEW13-9, 9163)

Mr. Brackinreid stated in evidence that the memorandum had been sent to him by Mr. Timmons but that he did not think that the proposal to stagger prices had been adopted (Evidence, pp. 827-30).

The following statement from a letter written by Mr. Timmons to Mr. Brackinreid on October 4, 1939, indicates that Phillips received tender information from other manufacturers:

> "The other day I received in the mail a memo from G. dated September 25th indicating prices which he had quoted this customer on their requirements of aircraft cables. . . ."
>
> (Ex.246, 3PEW13-7, 9160)

On one occasion when someone apparently submitted lower prices than those submitted by Canada Wire, on a particular order,

T. A. Gass wrote the other manufacturers as follows on May 21, 1940:

> "We are informed by the above Department that the tender numbers referred to above have been placed elsewhere with a saving in price, from which it would appear that this material may have been placed with some outside jobbers.
>
> In view of this, I would like to suggest that each one of the persons to whom this memo is addressed, advise the others if they have been awarded or should be awarded any of the above tenders, and if it develops that the tenders have all been placed outside of our group I believe we should give the matter serious consideration as to future policy."
>
> (Ex. 348, 2BIW27-85, 9984)

Another example of the exchange of pricing information on tenders is found in a memorandum sent out by T. A. Gass on September 10, 1940. The memorandum listed the prices quoted to a prospective customer (Ex. 348, 2BIW27-152, 10057).

J. G. Smith of Federal, in a memorandum dated February 24, 1941, outlined the practice followed by Federal when quotations were requested:

> "With reference to our memo of February 19th, the matter of this price was taken up with L. prior to our quoting the above company. L. agreed that the previous price was too high for the type of material involved and we sent our price in on a revised basis.
>
> Incidentally, we did not quote until the following day, and our memo, reading 'We have today quoted' went out in error, as our practice with memos has always been not to quote until noon of the following day after the memo has been sent out. Several of our memos in the past have carried this phrasing, which was in error, as we have always adhered to the practice of not quoting till the following day.
>
> . . ." (Ex. 391, 2BIW27-288, 10207)

On September 26, 1941, J. H. Fitzgerald of Phillips circulated a memorandum indicating the prices his company proposed to quote to Federal Aircraft Limited (Ex. 27, 2BIW20-2, 9257). Mr. Fitzgerald was questioned as follows about this exchange of information:

> "Q. I show you Exhibit No. 27, dated September 26, 1941. Could you identify your initials which appear on the bottom of that Exhibit?
>
> A. Yes, I identify them.
>
> Q. We were discussing earlier this morning this exchange of information on tenders. Is this an example of the type of information which would be exchanged between the manufacturers of special tenders?
>
> A. Yes, it is.

Q. And in this particular case, I take it that Phillips Electric was advising the other manufacturers as indicated by the initials on the lower left hand corner of your quotation?

A. Yes.

Q. Could you just indicate on this document what firms these initials represent?

A. The Canada Wire & Cable, Northern Electric Company, Canadian General Electric Company, Boston Insulated, Federal Wire & Cable."

(Evidence, p. 631)

K. P. Macpherson of Northern also identified Mr. Fitzgerald's signature. He said that on special types of materials competitors would advise Northern in most cases with respect to prices they intended to quote and Northern would advise their competitors similarly. Mr. Macpherson confirmed in evidence that there was an understanding that price information would be exchanged on tenders:

"Q. I wanted to know whether this exchange of information on tenders relating to particular products was the result of an understanding among the manufacturers they would exchange this type of information. In answer to Mr. Hunter I understood you to say Mr. Fitzgerald would send this type of information to you if he felt Northern Electric would be interested?

A. Yes, that is correct.

Q. Was there an understanding that he would send it?

A. There was an understanding he would keep us informed."

(Evidence, pp. 89-91)

Mr. Macpherson also testified that the prices which the manufacturers proposed to quote would be circulated to competitors before prices were submitted to customers (Evidence, pp. 92-3).

Further memoranda were exchanged in October 1941 with respect to tenders to the Department of Munitions & Supply. In one of the memoranda T. A. Gass of Canada Wire wrote:

"After discussing the matter with 'T' and 'M' it was agreed that the new price list for Aircraft Cables which we submitted on September 19th be used for this tender, and we would ask you to note we are quoting accordingly.

We are quoting as follows on the items not covered by the price list:"

(Ex. 350, 2FED5-8, 14245, Oct.7, 1941)

Exhibits 323, 350 and 287 are groups of documents relating to the exchange of pricing information on tenders in 1941. Three of the memoranda contained in these exhibits originated with

J. H. Fitzgerald of Phillips (Ex. 350, 2FED5-3, 14235, October 27, 1941; Ex. 323, 2FED5-4, 14237, October 22, 1941; Ex. 287, 2FED5-2, 14233, October 28, 1941) and one with T. A. Gass of Canada Wire (Ex. 323, 2FED5-6, 14241, September 29, 1941). Mr. Fitzgerald stated that these were examples of the manufacturers exchanging information on the prices they proposed to quote on tenders.

Mr. Fitzgerald, on November 17, 1946, sent to Canada Wire and Northern a memorandum with reference to a tender for the City of Winnipeg Hydro Electric (Ex. 160 and 352, CWC19-5, 2601). The memorandum was sent for the purpose of advising these companies of the prices Phillips proposed to quote (Evidence, p. 634).

Occasionally a manufacturer sent a second memorandum to the other manufacturers in order to advise them of a correction or change in the prices which his company proposed to quote. J. G. Smith of Federal sent out such a correction on May 20, 1947 (Exhibit 44, 2BIW17-7, 9250). The system of exchanging such information appears to have been an established practice and was essentially automatic. With respect to this document, Mr. Macpherson said that although his company was a recipient it was not interested in quoting on the particular order (Evidence, pp.131-2), while Messrs. Fitzgerald, Arnold, Barnhouse and Bell identified it as the type and form of memorandum exchanged with respect to pricing information on tenders (Evidence, pp. 638, 1271-2, 1564, 1934).

In a letter to the general manager of Canada Wire on October 21, 1947, T. A. Gass of Canada Wire outlined how he proposed to quote to the Winnipeg Hydro Electric System. The letter referred to discussions with C.G.E. about the tender and Mr. Gass testified as follows: (Ex. 351, CWC19-4, 2600)

"Q. I show you a document coded CWC19-4, Serial 2600, dated October 21, 1947. Could you indicate what manufacturers would be interested in tendering on the type of product referred to here as 69KV cable?

A. I know that we were interested and I know the Canadian General Electric was interested.

Q. Is that the reason you discussed this with C.G.E.?

A. At that time the Canadian General Electric had never supplied or manufactured any cable of this type and to the best of my knowledge they were not seriously interested in this but they wanted to put in a price because Winnipeg Hydro wanted competition.

Q. Was the interchange of information with regard to these quotations usually carried on by phone calls or by memoranda?

A. Both; in this case I have a very clear recollection of it and it was a telephone call or a discussion over a luncheon table."

(Evidence, pp. 1676-7)

He was further questioned about what he understood by the Winnipeg City Hydro's desire for competition:

"A. I was informed by the Manager of our Winnipeg office, according to my recollection, that the Winnipeg Hydro which was a municipal body hated to place an order for this large amount of cable with the Canada Wire & Cable Company which was the only one who had previously supplied that high voltage cable, without having a competitive price from some other concerns. That is my recollection of the matter but, as you see, it was a few years back.

Q. When you say a competitive price, do you mean a different price from your bid?

A. For the record, the City Council liked to see two or three prices."

(Evidence, pp. 1677-8)

On occasion, errors in quotations occurred owing to the different treatment of the many variables which existed in the preparation of prices. When this occurred efforts were made to prevent a recurrence and to eliminate the possibility of future misinterpretation of the pricing procedure. J. H. Fitzgerald of Phillips, outlined such a situation on October 29, 1948 in a memorandum to Canada Wire, Northern and C.G.E. with reference to the International Nickel Company (Evidence, pp.689-90):

"On September 21st we quoted, through our agent, for the above on a quantity of 78,000 ft. each of #1 and #2/0 hard drawn bare copper cable, at the regular prices including map rate freight to Sudbury.

We have been recently advised that this business was placed on the basis of the f.o.b. Toronto prices with freight either pre-paid and charged or collected.

Taking into consideration the gross weight of material shipped on reels, the saving to the customer would not be more than ten to fifteen dollars on a total value of around $18,000.00, nevertheless it was apparently sufficient to obtain the order.

If this is the way we are going to quote in these inquiries, we would certainly like to know about it, but we can see no value in Mac's suggestion on advancing the shipping weights to calculate map rate freights for material shipped on reels, if we are going to quote on this basis.

We do not know who received the order but presume it was one of the parties to whom this memo is addressed and we would appreciate receiving your comments."

(Ex. 60, AEL6-19, 227)

K. P. Macpherson said in evidence that this particular quotation would come directly from the price book and the freight rate from Toronto to Sudbury should have been used. Because freight was not charged in this manner someone obtained the order at a lesser price (Evidence, pp. 157-8).

M. R. Macdonald of Northern was shown a number of memoranda selected from the documents of Canada Wire and dated in 1949. He was questioned as follows re these documents:

"Q. Is this the type of information that is exchanged between the manufacturers on tenders? You mentioned earlier in our discussion that you passed certain information as to what you were going to quote on a certain tender to your competitors and you also said you received certain information from them. Is this the form in which this information is passed?

A. Yes." (Evidence, p.588; Ex.152)

A series of memoranda with reference to prices to the Canadian Commercial Corporation were identified and filed as Exhibit 339. These memoranda were dated June and August 1950. One of the memoranda signed L's and identified as originating with Canada Wire (Evidence, p. 1780) was dated June 21, 1950 and read as follows:

"It will be noted that in three or four cases his prices are higher than those originally quoted but in our opinion we believe we should strive to quote prices that would represent a reduction in all cases over those originally offered in view of the reported U.S. prices. We believe this is the C.C.C's main concern and if they can show that the Ottawa meeting resulted in reduced prices across the board, we believe they would be satisfied regardless of whether or not all prices were the same. We ourselves would be inclined to quote the same prices throughout."

(Ex. 339, 3PEW6-8, 8912)

J. H. Fitzgerald of Phillips in replying to the above memorandum on June 22, 1950, said he did "not agree with L's assumption that the Canadian Commercial Corporation's main concern was that the Canadian prices were higher than the U.S. prices." His interpretation of the discussion was "that they were mainly concerned that all the Canadian prices were the same, and from this they drew the conclusion and would continue to draw the same conclusion if prices were the same, that the Canadians were quoting the price of the highest cost manufacturer." Mr. Fitzgerald felt that they should not quote at the same level (Ex. 339, 3PEW6-11, 8915).

F. W. Barnhouse of C.G.E. was shown the two exhibits referred to above and asked if they were illustrative of the type of information exchanged between manufacturers with respect to special customers. In reply he said:

"A. I think they are representative of interchange of information.

Q. In your opinion they are examples?

A. Yes, sir." (Evidence, pp. 1576-7)

Exhibit 279 consists of another memorandum with reference to a tender to the Canadian Commercial Corporation. The memorandum was dated August 24, 1950 and was signed "S", which was the initial used to designate J. G. Smith of Federal (Evidence, p.993, 3PEW 6-4, 8908). The purpose of exchanging this information was indicated

by Miss Martell in her evidence:

"Q. BY MR. HUNTER: Can you tell us what the purpose of other manufacturers, what the purpose would be in the other manufacturers sending you these notices on products that you did manufacture?

A. I suppose to agree on a price that would be quoted.

Q. If that was the purpose, and you did not receive a copy of their quotations or proposed quotations, how could you agree?

A. If we received it, the purpose of it to me would be to let us know what they were quoting. I mean if we were quoting another price or wanted to quote another price it would give us an opportunity to contact them and say why we wanted to quote another price.

Q. Is this type of information sometimes passed by telephone calls rather than by memo?

A. Yes.

Q. Would it be correct to say that in cases where there were special items not covered by any existing price list, that the practice of the manufacturers was to either exchange information on proposed quotations by way of memo or by telephone calls, but that the practice was to exchange information?

A. Yes." (Evidence, pp. 995-6)

On September 28, 1950, K. P. Macpherson of Northern informed Mr. Arnold of Boston of the prices which he had quoted to the Otis Elevator Company (Ex. 297, 2BIW8-1, 9189). Commenting on this exhibit, Mr. Arnold said:

"A. Yes; evidently, he wrote me and told me what was being quoted on certain cables.

Q. Is this an example of the type of information which was exchanged between manufacturers with regard to quotations on special tenders?

A. I would say at rare intervals, not all quotations, but just at rare intervals.

Q. Is that 'A' in the lower left hand corner the same 'A' of designation for you?

A. That is my understanding.

Q. This document was in your file so presumably it came in?

A. Yes." (Evidence, p. 1297)

K. P. Macpherson of Northern and J. H. Fitzgerald of Phillips identified Exhibit 67, which consists of a memorandum

dated October 25, 1950, that originated with Mr. Smith of Federal, as another example of the exchange of pricing information on tenders (Evidence, pp. 183-5 and 654; Ex. 67, 3PEW6-3, 8907).

Exhibits 180, 341, 374 and 386 consist of memoranda that were identified as being recent examples of the exchange of tender information. The memoranda are dated April 14 and 15, 1952 and were all found in the files of Phillips. They are somewhat different than memoranda of earlier dates in that they contain no initials in the lower left-hand corner to designate the recipients and they do not contain the phrase "We propose to quote as follows". They were identified as being typical of the memoranda now exchanged with respect to pricing information on tenders. Some of the memoranda were identified as having originated with Canada Wire and one as having originated with Phillips (Evidence, pp. 670, 1583-4, 1783-4, 1843-4).

Exhibit 151 was identified as the working papers used by Northern's staff in preparing tender information to be sent to the other manufacturers and Mr. Macdonald's evidence in this regard is as follows:

"Q. . . . Would you look at these documents and say whether you can identify the handwriting that appears on them or whether you have ever seen the documents before? I understand they were documents that were removed from the files of the Northern Electric Company.

A. I would say they are Mr. McLaren's writing.

Q. He is in your Department?

A. Right. I am not a handwriting expert, though.

Q. Have you ever seen the documents before or do they mean anything to you?

A. They mean a lot to me. I recognize them for what they are.

Q. It is the usual type of document that is prepared by your staff in connection with certain types of work?

A. Yes.

. . .

MR. HUNTER: Q. Mr. Macdonald, could you explain what is meant by this handwriting that appears on the first document, 3NE27-1-1, where it states: 'Sheet to F.'

A. That means that we sent in the mail to Phillips Electric Works the price for that cable.

Q. Would this be a price which had been computed for a tender which had been received or at least a tender which had been referred for quotation?

A. Yes.

Q. And this, I take it then would be the working papers from which the figure would be prepared and the information sent to your competitors?

A. Yes.

Q. And if there were more than one competitor interested, then would there be writings on sheets to whichever was concerned?

A. Yes.

Q. There would be more than one initial, I take it?

A. Yes.

Q. Who in your Department actually types out and sends the sheet to 'F', in a case such as this document has referred to?

A. One of our stenographers.

Q. It is just mailed to Phillips Electric in that case, or is it addressed to Mr. Fitzgerald, or do you know the mechanics?

A. I would say that it was sent to Mr. Fitzgerald. The mechanics are routine when they are established."

(Evidence, pp. 584-6)

In addition to the evidence which many of the witnesses gave with reference to various memoranda concerning tenders presented to them for comment, there were a number of general statements made with reference to tenders and the exchange of information on tenders. All of the witnesses questioned with respect to tenders admitted that pricing information was exchanged by the manufacturers on the prices they proposed to quote. This information was exchanged generally by telephone or memoranda and the exchange took place usually prior to submitting the quotation to the customer concerned. The result was the quotation of uniform prices and it was admitted that the purpose of this exchange of information was to achieve such a uniformity (Evidence, pp. 413-5, 565-70, 573, 616-9, 714, 804-6, 818-9, 820-2, 859-62, 970-2, 1211-3, 1469-70, 1534-5, 1596-7, 1642-3, 1646, 1654, 1754-6, 1801-5, 1807-8, 1865-8).

D. C. Borden of Northern said that competition still prevailed in Canada despite this exchange of pricing information, because people from time to time departed from the agreed upon group prices. He also cited English competition as another factor in the competitive picture in Canada and said, "I bring that up because the competition that holds this thing down to a real competitive business is the outside competition" (Evidence, pp. 442-3). M. R. Macdonald also of Northern was asked what the basis of competition was on tenders when everyone submitted a similar price and he answered as follows:

"A. A great many tenders on jobs, Mr. Commissioner, are placed on more than one thing. For instance, the ability to ship it fast. That is one very important point. In some

cases we are able to convince certain customers that we do have better quality. We think we have the best power cable in Canada. We are able to sell certain engineers on the basis that we have modern equipment and a new factory and we feel we have the ultimate in some cables. I have to admit that a great many of our cables are standard. I spent something like 10 or 12 years in direct selling myself. Regardless of the fact that the prices were probably the same, I never had any orders handed to me for any reason other than I was calling steadily on that customer.

Q. Is there or has there been any arrangement since you submitted the same bids with the other manufacturers to allocate particular tenders? In other words, if you bid the same price Northern Electric would receive the tender in January and somebody else in October? Do you understand what I mean?

A. No.

Q. Has there been any arrangement amongst the manufacturers in which they in effect allocate to each other the tenders?

A. Definitely not; postively not. No, it is highly cut-throat competition.

Q. Except on a matter of price?

A. Except on a matter of price, I agree with you. At the time we make our quotations we have no reason to know that we are going to get business other than our sales offices bring as much pressure as they can. . . ."

(Evidence, pp. 571-2)

5. Classification of Customers

Various agreements and arrangements have been made by the manufacturers from time to time at meetings, by telephone, memoranda and otherwise to establish common and uniform policies with respect to the classification of customers and with respect to agents. It is my allegation that these have been as part of and in furtherance of agreements and arrangements to lessen or prevent competition in the production, distribution and sale of wire and cable.

The manufacturers have established various categories or classes of customers, mainly on the basis of the nature and volume of business and the products purchased. By agreement among them, customer lists have been established for some classes of customers and additions to, and deletions from, the lists have been made from time to time. Customer lists have been circulated on occasion to ensure that uniform lists be used by all manufacturers.

Purchasers, other than the established classes of customers, have bought wire and cable products at the list prices. Differential rates of discount from list prices of certain products were agreed

upon in respect of each class of special customers. These discounts were uniform for each customer within a class, but varied from class to class, as did the products upon which concessions were granted.

The following are some of the classes of customers for which uniform customer lists have been established:[1]

Electrical Wholesalers (also referred to as Electrical Jobbers) -

Generally, firms selling at wholesale a fairly complete line of standard wire and cable items.

Radio Jobbers -

Firms selling at wholesale principally to the radio trade.

Large Contractors -

Contractors purchasing a substantial volume of wire and cable products. (The large contractors' list is dealt with in the section on discounts).

Special Customers -

Certain equipment and apparatus manufacturers requiring square and rectangular bare copper wire.

Special Customers -

Mainly the larger motor repair accounts requiring magnet wire.

Manufacturers -

The larger equipment manufacturers requiring magnet wire.

Various witnesses contended that firms were frequently placed on a list by the individual action of one manufacturer. It is submitted, however, that this contention is not supported by the evidence or exhibits, which indicate that the general practice was to discuss and agree upon the firms that were to be added to or deleted from the lists.

Agreements and arrangements were also made restricting the appointment of agents to certain specified locations sometimes referred to as permissive or permissible agency points. From time to time consideration has been given to re-defining the permissive or permissible agency points. The qualifications of proposed agents have been determined and it appears that one manufacturer would not solicit business from the agents of another.

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1. These lists were submitted by the leading manufacturers to the Commissioner in written returns. Each of them recognized the same customers within each class. The dates at which firms were added to the lists were also given and they indicate that the various manufacturers added the same firms to their lists, or deleted them, at or about the same time.

The interest of the manufacturers in establishing and maintaining uniform policies with respect to customer lists and with respect to the appointment of agents would appear to be based upon the manufacturers' wish to maintain agreed-upon prices and to maintain resale prices.

The evidence and exhibits referred to in the following pages of this section deal with instances over a period of years of agreements and arrangements made by the manufacturers for the purpose of establishing common and uniform policies with respect to the classification of customers and with respect to the appointment of agents.

In 1933 certain memoranda were written which indicate that there was a recognized list of departmental stores entitled to receive the same special prices allowed to jobbers, but only on a limited number of wire and cable products. On January 31, 1933, K. P. Macpherson of Northern, in a memorandum addressed to Messrs. Gass, Keenan, Smith, Balfour and Arnold, stated:

"Departmental Stores.

We believe the name of Dupuis Freres, Montreal, should be added to those entitled to jobbers' prices on Flexible Cords only. If this is satisfactory we will reissue sheet."

(Ex.5, 2BIW21-299, 12228)

Another memorandum by Mr. Macpherson dated April 5, 1933 was as follows:

"Having communicated our desire to add to the list of Quebec jobbers Vandry Inc. and to the list of Departmental Stores, securing jobbers' prices on Cords, Dupuis Freres, we have received the following reply from the Quebec Jobbers' Association:-

'In connection with the telephone conversation which we had relative to the meeting of the Wire Manufacturers, as advised the writer took up at the last Jobbers' Meeting the question of add [sic] the name of Dupuis Freres to the list of departmental stores securing jobbers' prices on cords only. While we are not in favour of departmental stores getting this extra concession we can see no reason why Dupuis Freres should not be added to this list.

With reference to Vandry Inc. being extended jobbers' prices, we are not in accord with this movement.'

I assume therefore it will be TAG's desire to add Vandry Inc. to his list of agents."

(Ex.7, 2BIW 21-243, 12155)

Mr. Macpherson's memorandum of May 15, 1933, which was addressed to Messrs. Balfour, Gass, Keenan, Smith and Arnold, indicated some of the factors considered in determining whether or not a firm should be placed on the recognized list of jobbers entitled to the special jobbers' prices. The firm under consideration was

the newly established firm of Deniger St. Germain, Ltee.,Montreal. The memorandum states in part:

> ". . . It is their intention to operate a Wholesale Electrical business of Electrical Supplies, and have applied to us to get jobbers' prices on Rubber Covered Wire and Flexible Cords.
>
> The authorized capital of the Company is $20,000.00. It is their stated intention to operate purely a wholesale business with travellers on the road.
>
> We are informed that the C.G.E. Company have given them a distributors' set-up on appliances.
>
> I understand that the father of one of these gentlemen is a judge in the Province of Quebec, and that he is financing the undertaking.
>
> I do not see that we can do other than accord them jobbers' prices. What is your desire."
>
> (Ex.7, 2BIW 21-205, 12111)

Mr. Macpherson's memorandum of April 2, 1934, indicates that where a firm, whose name appeared on the jobbers' list, operated both wholesale and retail outlets, the retail outlets were not to be given the benefit of the special jobbers' prices. The memorandum, which was addressed to the same people as the previous one, concerned Crane Limited of Quebec and Canadian Fairbanks-Morse; it stated as follows:

> "It was the intention to limit Jobbers' Prices on Rubber Covered Wire, Cords, etc., to Crane Limited of Quebec only but our information is that they have been granted these prices at other points. I would, therefore, suggest that, if agreeable to you, they be placed on the Jobbers' List at all points at which they operate wholesale supply houses. In no case should their retail branches receive Jobbers' prices. The same applies to Canadian Fairbanks Morse, who are Jobbers in the West but not in the East.
>
> No action will be taken until a sheet is issued, showing these corrections, if agreeable."
>
> (Ex.8, 2BIW 21-79, 11900)

In February 1935, the Canadian Tire Corporation came up for consideration for the purpose of receiving jobbers' prices. On February 21, 1935 K. P. Macpherson of Northern sent out a memorandum which stated:

> "We do not believe that the Canadian Tire Corporation are entitled to jobbers' prices on any of our products, with the possible exception of Automobile Wires and Cables."
>
> (Ex. 10, 2BIW 22-39, 10829)

T. A. Gass of Canada Wire replied in a memorandum of February 22 as follows:

> "The above are a straight price-cutting outfit, and we, like Mac, do not believe they are entitled to Jobbers'

Prices on any of our products, with the possible exception of Automobile Wires and Cables, and even that I would be inclined to doubt.

I believe this has been stirred up by one of Mac's local salesmen here in Toronto, as our salesman was told that the N.E. Co., had undertaken to have them put on the Jobbers' List for all kinds of wire."

(Ex.349, 2BIW 22-37, 10827)

Mr. Gass was questioned with respect to the above document and stated:

"Q. I think earlier this morning you mentioned that whether a jobber was a price cutter was not one of the factors which entered into the recognition of that jobber?

A. That is correct.

Q. Could you explain the reference here then?

A. I can. This is a corporation handling automobile accessories, a firm doing business in various places throughout the country. They have no connection with the electrical trade as such contractors. They were not, in my opinion, a suitable outlet for the sale of electrical wire and cable. They were the lowest price people in the automobile accessory business at that time. Our policy was to try to give a profit of a fair margin for the outlet of an electrical supply house. Does that answer your question?

Q. Would the fact that your policy was to provide a fair margin of profit for the regular electrical wholesaler mean that where a particular jobber was a price cutter that would affect your policy?

A. Not if he was a recognized jobber. If he was a regular recognized jobber, the jobbers can fight that out between themselves but we should not put people like tire companies into business to compete with them.

Q. You explain this memorandum that this Canadian Tire Corporation was not the type of outlet that should be recognized but not because it was a price cutter but rather because it was not an electrical wholesaler?

A. He was also a price cutter in his own line.

Q. That fact influenced your company, did it?

A. It influenced me that he was not a suitable man for an electrical wholesaler and not from the price cutting angle."

(Evidence, pp. 1670-1)

A memorandum written by E. T. Lough to K. P. Macpherson, both of Northern, on February 8, 1935, accompanied minutes of a meeting held February 5, 1935 in the Winnipeg office of Canada Wire, and attended by representatives of C.G.E., Phillips, Northern and Canada Wire. The minutes indicated that a new jobber-agent

arrangement was set up at about that time (Ex.72, NE 28 and NE 29, 963-4). The exact nature of the arrangement is not known, but it apparently involved a change in the discount system. The first paragraph of the minutes referred to "the new set-up on R.C.Wire and Cable agent jobbers arrangement". Paragraph three stated:

> "In reference to the new jobber-agent discount - it was agreed that we must stick to the arrangement 100% and we will watch carefully the operation of this Jobber Agency policy; it was mentioned as an example, that might make the operation of the new policy a little difficult. The Marshall Wells Co., Ltd., Port Arthur are agents for E. F. Phillips under the new arrangements, and due to this geographical location the Marshall Wells Company head office Winnipeg could buy for all their branches by placing their orders on their Port Arthur branch and save extra 2½% or a good portion of same as the zone resale pretty well takes care of the freight."

(Ex.72, NE28 and 29, 963-4)

In a memorandum dated July 22, 1935, P.F. Sise, then president of Northern, referred to a new jobber-agent-distributor set-up. According to Mr. Sise the object was to "work out some arrangement which will result in a reasonable stabilization of prices", but he did not think that it could be done if any manufacturer thought he was handicapped by reason of the "sales organization or set-up his competitors" were able to create. Mr. Sise' memorandum stated in part, as follows:

> "Referring to our discussion of this morning, regarding the proposals emanating from the recent meeting in Toronto with respect to an agreement regarding the sales of rubber covered wire and cords, which, as I understand it, propose a somewhat drastic reduction in the discount allowed to jobbers and also propose an extension of the appointment of agents and the appointment of distributors.
>
> As I see it the suggestion to appoint distributors would not be acceptable to the majority of manufacturers and would only complicate the situation not improving it in any way.
>
> It seems to me that the principal concern of all of us is to work out some arrangement which will result in a reasonable stabilization of prices and I think we must recognize that this cannot be done so long as any manufacturer considers he is handicapped by reason of the sales organization or setup his competitors are able to create but which he, by reason of his limited range of products, cannot create. If we admit this, it would appear as if the only solution is to try to work out an arrangement which, as far as possible, recognizes the limitations of certain manufacturers and provides channels through which their products can be marketed on some sort of an equitable basis. My suggestion would be as follows."

(Ex.23, NE 31-1 to NE 31-3,966-8)

Mr. Sise' suggestion, as set out in this exhibit, was that each manufacturer should be free to appoint agents, but under a definite agency agreement which would define the agent's territory; it was to be agreed between the manufacturers that each agent was to

receive a commission, but the amount of the commission paid by the principal to the agent need not be disclosed to the other manufacturers; manufacturers were to be free to place consigned stocks with their agents; each agency agreement was to cover specified products and the other manufacturers were not to solicit business from the agent for these products. "A manufacturer appointing an agent must accept full responsibility for his agent's actions, particularly with respect to prices, terms, etc., insofar as the agency products are concerned". It was his suggestion that when an agent was appointed for all products of a manufacturer an arrangement should be made whereby the agent could order from other manufacturers, products not manufactured by his principal, but the agent should be billed through the principal in order to give the principal proper control over the agent. With respect to jobbers, Mr. Sise suggested that:

> "Recognized jobbers who are appointed as the agent of any manufacturer should be removed immediately from the jobbers' list insofar as the agency products are concerned."

He concluded as follows:

> "It seems to me if such an arrangement can be worked out, it will have a decided tendency to stabilize the business in each territory as the agency appointment would be sufficiently valuable to the agent to give the manufacturer adequate control over the agent's actions.
>
> I fully realize that such an arrangement might not be acceptable to all the manufacturers but I am convinced it would be a fair one to all concerned and the practical result of it would go a long way toward solving the situation which presently exists with respect to jobbers. Will you please give some consideration to the suggestion and then if it seems reasonable we might discuss it with the Canadian General Electric before suggesting it to the other manufacturers."

K. P. Macpherson of Northern was questioned in part as follows with respect to the above document:

"Q. . . . , do you recall attending the meeting to which Mr. Sise refers in the first paragraph of this memorandum?

A. I do not recall the actual meeting, but I would be there.

Q. Would this be a meeting of the members of the various manufacturers, under the circulating system?

A. It would be an industry meeting.

Q. Would the various persons whose names appear or have appeared from time to time on the circulating memoranda be there?

A. Not a lot of them by any manner of means. A number of those I mentioned were not in the picture at that time.

Q. But those people who were on the circulating memoranda system in 1935 would be in all likelihood present at this meeting in 1935?

A. Yes, they would.

. . .

Q. When you say 'one price across the board' do you mean all the manufacturers had the same price?

A. As far as I was concerned, as I recall, we were selling -- I may be subject to correction -- it was on the quantity basis and there was no differentiation made between the class of customers as long as they bought the quantity required.

Q. And that was not a satisfactory situation from the point of view of Northern Electric?

A. It affected Northern more than anyone else. It was not a satisfactory point of view as far as the wholesalers were concerned and some of these manufacturers were dependent on the wholesalers for their distribution.

. . .

Q. Can you say whether Mr. Sise's recommendations were subsequently implemented by the industry?

A. As far as it became practicable to do so, I believe they were."

(Evidence, pp. 74-8)

K. P. Macpherson wrote a memorandum dated December 1, 1937 to which were attached sheets dealing with non-metallic sheathed cable. These documents stated that "Jobbers on the Approved Jobbers' List may be sold at the Net Jobbers' Prices, shown on Page #99 F.O.B. their Warehouses in Distributing Points shown above" (Ex.15, 2BIW22-514-1 to 2BIW 22-514-3, 11369-71). Messrs.Gass, Timmons, Leary, Arnold, Smith Meehan and Longtin were identified by Mr. Macpherson as the recipients of the memorandum (Evidence, pp. 56-7).

In a memorandum dated December 6, 1937, C. S. Leary of C.G.E. made the following statement with respect to a proposal by "S" (J.G. Smith of Federal) to appoint Electrical Supplies, Ltd., Winnipeg, as his agent:

> ". . . As in the past, we assume that if this appointment is negotiated, arrangements will be made whereby they will be obligated to maintain the established resale."
>
> (Ex.322, 2BIW22-502, 11357)

Mr. Leary, asked if he had any comment or explanation to make with regard to the above paragraph, testified as follows:

"Q. Then what is the interest of the other manufacturers in the resale price at which Mr. Smith's agent will sell his product?

A. I suppose the answer to that is a selfish one from our standpoint.

Q. That is, that if he sold Mr. Smith's products below your established resale price, which you said would mean your published price list --

A. That is correct.

Q. That he would then take the business away from your agents or branches? Is that correct?

A. From the branches. We would only have to meet it.

Q. Then does this indicate that there was an arrangement in 1937 and before 1937 whereby when an agent was appointed that he was obligated to maintain resale prices in order not to compete with the other manufacturers?

A. I made a statement we had no agencies. (This is going back a bit). At one time we did have an occasional agent. We, in appointing him agent, asked him to adhere to the resale. Now, what the other companies did I cannot answer for them.

Q. Well, what do you mean, Mr. Leary by the second paragraph of this memorandum, that is:-

> 'Arrangements will be made whereby they will be obligated to maintain the established resale'.

A. I assume that if Mr. Smith made an agreement with this party to sell his products on an exclusive basis, he could enter into a contract with him and ask him to maintain prices.

Q. Is that what you did in the case where you did appoint an agent?

A. We asked him to maintain prices.

Q. Did you enter into a contract with him?

A. No, we never had a contract form, sir.

Q. Does your statement in the second paragraph of this letter indicate a practice which was prevalent in the industry or among the manufacturers at that time where they were appointing an agent?

A. It appears as though it were."

(Evidence, pp. 1478-80)

The above memorandum appears to have been sent to Messrs. Gass, Macpherson, Timmons, Arnold and Smith.

In a memorandum dated February 5, 1938 which appears to have been sent to Messrs. Macpherson, Timmons, Leary, Smith and Arnold, T. A. Gass of Canada Wire outlined the situation with respect to Consolidated Dealers Limited, Toronto (Co-operative Jobbing House). This company had assured Canada Wire that they were getting jobbers' prices. Mr. Gass stated in his memorandum:

"You may recall this account was discussed on several occasions as to whether or not they should be granted Jobber's status, and the decision has always been that they should not be recognized as jobbers and only be allowed to buy at Net List.

. . . If they are not buying from any manufacturer at jobbers' prices, it is, of course, possible that they may be buying from an agent, who may be giving them jobbers' price and only taking his agent's commission. In my opinion, this angle should be thoroughly checked."

(Ex.347, 2BIW 26-10, 10554)

In the spring of 1938, H.R.Carson Limited, Lethbridge, Alberta applied to be placed on the "Jobbers' List." In a memorandum dated March 2, 1938 T. A. Gass of Canada Wire wrote as follows:

"Referring to application from the above to be placed on the Jobbers' List, I might state that I have now heard from our Calgary Office in connection with this Company, to the effect that we have been supplying them with their requirements of Aerial Kits, Radio Wires, etc, for some years, and also,small quantities of other wire, but they have never been very large purchasers, although our Calgary manager states that if they were put on the Jobbers' List for all electrical material they might be able to build up a fair business.

In the opinion of our Calgary manager, if Carson is put on, there is no question but what Hoyt Hardware Limited of Lethbridge should also be put on the list, and this, in my opinion, is the danger of recognizing jobbers at points where there has not previously been a jobbing house, in that, if you recognize one, you must recognize others who are comparable in the same place."

(Ex.347, 2BIW 26-35,10580)

Dealing with the same matter in a memorandum of March 3, C. S. Leary of C.G.E. wrote that "this company has been buying wiring material at jobbers' prices and has, in turn, been selling direct at prices slightly under the schedule". He recommended that the matter be discussed before arriving at a decision (Ex.322, 2BIW26-38, 10583).

K.P. Macpherson of Northern wrote a memorandum on March 4, 1938 recommending that they not be given jobber status, the main reason for this recommendation appearing to have been that if they were placed on the "Jobber List" at least two other auto accessory jobbers in Alberta would also have applied to be placed on the list (Ex. 74, 2BIW26-39, 10584). Mr. Macpherson was questioned with respect to this exhibit and, after identifying his signature on the document, his testimony was as follows:

"Q. Would you state to whom this memorandum was sent or the recipients?

A. The memorandum was sent to Leary, to Timmons, to Gass, to Smith and to Arnold

Q. The reference in the memorandum is to H.R.Carson Limited, Lethbridge, the second paragraph states:

'We recommend that the above named company be not given jobber status.'

A. For the simple reason he was not in the electric business. He was an automotive chap. What he was really trying to get there was ordinary things. He had no intention of acting as an electric jobber.

Q. My question was, in the period 1938 to 1939 was it not a fact there was a lot of information exchanged between manufacturers as to who should be or who should not be appointed jobbers?

A. Yes.

Q. This is an example of one of those things?

A. Yes, and a very good reason why this man should not be appointed a jobber.

Q. In your opinion?

A. In my opinion." (Evidence, p. 201)

In March 1938 Canada Wire proposed to appoint the Johnson-Turner Company, London, Ontario as its agent. K. P. Macpherson of Northern, in a memorandum dated March 28, 1938, objected on the ground that since the company was a subsidiary "of the Windsor Company" the appointment would lead to complications in Windsor (Ex. 15, 2BIW26-57, 10602). C. S.Leary of C.G.E. objected on the ground that, since the company was becoming quite active in the electrical contracting business, they were not entitled to consideration as agents (Ex.322, 2BIW 26-64-1, 10609).

On April 14, 1938, a memorandum from P. A. Timmons of Phillips went out to Messrs. Gass, Macpherson, Leary, Arnold and Smith (Evidence, pp.202-3) stating with reference to the Canadian Electrical Supply Co., Montreal, that "The above have made application to be placed on the Jobbers List and we would suggest that all concerned arrange to discuss this question at the next meeting" (Ex.76, 2BIW 26-73, 10620).

In the spring of 1938 the Martineau Electric Co. came up for consideration for addition to the Jobbers' List. In a memorandum dated May 22, 1938, P. A. Timmons of Phillips stated that, "We see no reason why the above should not be placed on the Jobbers List and would appreciate it very much if all concerned would agree to place these people on the list" (Ex.75, 2BIW26-110, 10660). Messrs. Leary and Gass, in memoranda of May 27 and June 10, respectively, stated that they had no objection (Ex.322, 2BIW26-114, 10666; Ex.347, 2BIW 26-123, 10675).

On July 14, 1938, a memorandum went out from Federal in which it was stated that Federal desired to appoint Independent Electric Limited, Ottawa, as its agent (Ex.390, 2BIW 26-137, 10689). On July 18 a further memorandum sent out from Federal apparently in reply to one from K. P. Macpheron of Northern:

"In reply to M's Memo of the 15th instant re Independent Electric Company, he apparently has been misinformed regarding this matter.

This firm wired us on July 11th and we had no communication with them prior to this date. On July 12th, I telephoned two interested parties and discussed the matter, and up to the present time we have not even completed our arrangements with this firm and are waiting to hear from other interested parties. We communicated with the Independent Electric on July 12th, advising them we would consider the matter.

If anyone has any objection to this appointment, I wish they would immediately put forward their objection."

(Ex.390, 2BIW26-139,10691)

In a memorandum dated July 18, C. S. Leary of C.G.E. acknowledged the July 14 memorandum from Federal. He stated that Independent Electric, Ltd. had approached various wire manufacturers for an agency proposition on wire and cable products. Mr. Leary had no objection "to their being appointed agents for S, provided that this arrangement is confined to the city of Ottawa, and not extended to Toronto" (Ex.322, 2BIW26-147, 10699). A third memorandum from Federal on July 21 stated that:

"As we have not received any objections to the appointment of the above firm as our agents to represent us in Ottawa, we are making this appointment.

This, I can assure you, will in no way affect their Toronto branch".

(Ex. 390, 2BIW 26-145, 10697)

With respect to the three memoranda that originated with Federal and which formed part of Exhibit 390, T. J. Bell identified them as having originated with his company and as being documents illustrative of the type of memorandum which was exchanged between manufacturers (Evidence, p. 1884). C. S. Leary of C.G.E. identified his signature on document coded 2BIW26-147 and admitted that the memoranda contained in Exhibit 322, of which document coded 2BIW26-147 was a part, were "representative of memoranda which were exchanged between the various wire and cable manufacturers over a period of time" with respect to "the appointment of jobbers or wholesalers and the appointment of agents". After 1945 Mr. Leary was not directly concerned with such matters (Evidence, pp.1475-6).

A memorandum sent out to the other manufacturers by T. A. Gass of Canada Wire on October 27, 1938, indicated that there was an agreement or understanding within the industry that the manufacturers would attempt to control jobbing outlets with respect to the prices at which the outlets sold wire and cable products. Mr. Gass stated as follows:

"We had a meeting to-day with Messrs. Wagman and concluded arrangements with them along the lines considered the first of the week, all of which they professed to be in hearty sympathy with and the new levels to jobbers are to become effective immediately with them.

Messrs. Wagman also undertake to endeavour to control certain jobbing outlets who have been causing trouble and to use their best efforts to have them maintain the proposed jobber's resale." (Ex.113,2BIW26-155, 10707)

K.P. Macpherson of Northern was examined with respect to Exhibit 113 and testified, among other things:

"Q. Could you explain the second paragraph of the memorandum where it states:

'Messrs. Wagman also undertook to endeavour to control certain jobber outlets who had been causing trouble and to use their best efforts to have them maintain the proposed jobbers' resale.'

A. That is explained by the fact that Wagman were selling their products to some of their customers who were selling at any old price other than what Mr. Wagman published in his price list.

Q. Do you mean Messrs. Wagman were selling at any old price, or their customers were selling?

A. Their customers. There is no control over that by law any longer. I mean, once we sell a thing to a jobber he can do what he likes with it. That is the new law that was passed last April.

Q. I take it then this reference in 1938 is to resale price maintenance?

A. Upsetting the market.

Q. And at that time there was a certain amount of policing of the jobbers or jobber outlets or whatever the phrase is?

A. The principals tried to correct it."

(Evidence, pp. 295-7)

Correspondence in February 1939 is further indication that the maintenance of resale prices by distributing outlets occupied the attention of the manufacturers. The Leff Electric Co., London, proposed to begin manufacturing Romex Non-Metallic Sheathed Cable and applied to Canada Wire to secure a licence for its manufacture. In his memorandum dated February 18, 1939, T. A. Gass of Canada Wire suggested that if Canada Wire appointed Leff Electric Co. as their agents:

". . . we would, of course, be responsible for their maintaining prices on wire products and might possibly help them by bringing a certain amount of pressure on them to maintain the price of the Loom that they are going to manufacture".

Mr. Gass went on to say that he had arranged to have one of his men discuss the agency possibility with Leff and concluded:

". . .

I trust that should we be able to conclude an arrangement along the lines above mentioned, that it will meet with the approval of all concerned, as I honestly believe that we would be acting for the best interests of the Industry as a whole

without much hope of securing any business through Leff."

(Ex.347, 2BIW25-78, 11486)

In a subsequent memorandum of February 22, 1939, Mr. Gass noted that Mr. Leff had not "yet purchased Saylor Braiders for making Loom", and continued:

> "Mr. Leff apparently is inclined to be a price cutter, as are many others in similar circumstances, and would not be interested in an Agency proposition unless he had a free hand to meet competition. On this account, of course, we are proceeding no further with him.
>
> Doubtless he will approach others along the same lines and I would suggest that everybody insist in dealing with him, that they would not consider any proposition without price control."

(Ex.347, 2BIW25-80, 11488)

On February 27 C. S. Leary of C.G.E. acknowledged T.A. Gass' second memorandum and stated that "in the event we are asked for prices, we will be guided accordingly" (Ex.322, 2BIW25-88, 11497). When questioned with respect to this memorandum, to which was affixed a single "L" as signature, Mr. Leary said that it was not his signing of the "L", although it was his initial (Evidence, p. 1474). It would appear that the memorandum originated in Toronto with C.G.E. and that it was signed by someone for Mr. Leary.

In early 1939 the firm of Ahearn & Soper Limited, Ottawa, was considered for addition to the Jobbers' List. On February 24, 1939, P. A.Timmons of Phillips, in a memorandum which appears to have gone to Messrs. Gass, Macpherson, Leary, Arnold, Smith and Longtin stated:

> "Referring to recent telephone conversation regarding the above, we understand that the majority are in favour of placing the above mentioned concern on the Jobbers List and we are acting accordingly."

(Ex.79, 2BIW25-85, 11493)

K.P. Macpherson of Northern was examined with respect to this document and identified the initialled signature as that of Mr. Timmons. Mr. Macpherson explained that Ahearn & Soper Limited had formerly been Northern's agents in Ottawa but when Northern opened a branch office in Ottawa, about this time, they had cancelled the agency agreement. The suggestion was then made that Ahearn & Soper be placed on the Jobbers' List. According to Mr. Macpherson they had been enjoying jobbers' prices under the agency agreement, although they were not on the Jobbers' List. Mr. Macpherson said that the other manufacturers were canvassed by telephone and after the canvass had been made it was decided to place Ahearn & Soper on the jobbers' list (Evidence, pp. 215-8).

In March 1939 the Milne Electric Company, North Battleford, Saskatchewan, requested that C.G.E. recognize them as electrical jobbers. On March 7, 1939, C. S. Leary of C.G.E. sent out a memorandum to the industry with respect to the request. The memorandum stated:

"We have received a request from the above company to recognize them as electrical jobbers.

From the information available I believe that they are fully qualified to function as electrical jobbers, and as there are two other jobbers already recognized in North Battleford, namely Lemery-Denison and Sterling Mill Works, I would appreciate receiving your approval of this appointment."

(Ex.322, 2BIW25-103,11513)

Apparently Mr. Leary received a reply to his memorandum from Federal on March 9, and on March 10 Mr. Leary sent out another memorandum in which he stated:

"In reply to S's memo of the 9th, my idea in sending out my memo of March 7th was to enable everyone to come prepared to discuss this at the next meeting.

It is my understanding that all agency and jobber appointments before being made are required to be brought up for discussion at a meeting."

(Ex.322, 2BIW25-111-2, 11522)

A memorandum was written by T. A. Gass of Canada Wire on May 17, 1939 referring to Industrial (Evidence p. 1667) and copies of it appear to have been sent to the various companies in the industry with the exception of Automatic and Industrial. The memorandum stated, in part, as follows:

"I had an interview with our so-called customer whom we discussed last week and advised him that one of the manufacturers had definite proof that he had cut a price to a jobber, which Mr. 'W' stated was not his policy nor had he any intention of allowing prices to be cut.

I stated this was a very definite case of which we had proof and he advised that it must be out West where he promptly admitted his agent, a man by the name of Adams in Vancouver who apparently handles their products, and also Solex Lamps, had supplied a jobber at an extra discount of 7½%. He promptly produced a copy of a letter he had written to Mr. Adams stating that they would not accept any further business except at the authorized discount.

Mr. 'W' stated that his policy would be to absolutely maintain the prices and I really believe that he is in earnest, so much so, that I discussed with him the advisability of him trying to make Community and other jobbers who bought from him maintain the resale. He stated that he had already had this matter up with them and that they had practically told him it was none of his business what they did with the material they purchased from him as long as they paid for it, but he seemed to indicate that there was some hope of the jobber situation straightening out as far as Superior and Community were concerned. . . ."

(Ex. 348, 2BIW25-193, 11605)

A memorandum dated July 28, 1939, sent out from Northern (Evidence, p. 58) stated:

> "Attached you will find a tabulation of the Electrical Jobbers in Canada who now appear on various Jobbing Lists.
>
> Will you please study this list with a view to eliminating as many jobbers as possible who do not appear in each of the four lists."
>
> (Ex.73, NE62, 1015; Ex.15, 2BIW25-245, 11663)

When examined with respect to this document, Mr. Macpherson of Northern said he was not sure what four lists were referred to, but thought that they might be lists applying to the various sections of the electrical industry, i.e., wire and cable section, wiring materials section, wiring device section, etc. Mr. Macpherson was questioned as follows with respect to the handwritten notes which appear on Exhibit 73:

"Q. There are some handwritten notes at the bottom left-hand corner of Exhibit 73. It says: 'K.P.M. took part of this to meeting August 29, 1939'.

A. That is what it says.

Q. What meeting would that be?

A. I would say it was an industry meeting.

Q. And this subject of jobbers would be discussed at that meeting?

A. Yes.

Q. And would agreement be made between the representatives as to who was going to appear on what list, what firms or what would be discussed at the meeting?

A. Our object was to keep our branch houses informed of set-ups. We had lists which were obsolete and we wanted to keep our branch houses informed as to who our competitors were in the jobbing field. As I told you before, speaking for our company, we never have agreed to a lot of people on those jobbing lists and do not sell them.

Q. Was the object of the industry to eliminate as many jobbers as possible from the jobbing lists?

A. We knew there was dead-wood on the list. We did not contact them all.

Q. In the case of Northern Electric you would know who your own dead-wood were?

A. Yes.

Q. But it was necessary to have a meeting to find out the dead-wood in the other manufacturers; is that correct?

A. Yes.

BY THE SPECIAL COMMISSIONER:

Q. Dead-wood to one might not be dead-wood to another?

A. That is correct. A lot of those fellows get on there by virtue of somebody getting somebody to do some work for them sometime."

(Evidence, pp. 198-9)

On August 26, 1939, E.B. Watts of C.C. & F. wrote to K.P. Macpherson of Northern and asked him to note that they had appointed two agents, one was Crowell Agencies Limited, Halifax, Nova Scotia, and the other J. E. Murphy, Glace Bay, Nova Scotia, agent for Cape Breton Island (Ex. 80, NE 24, 954). Mr. Macpherson acknowledged receipt of the letter on August 28, and stated that "This matter will be brought up on the next convenient occasion" (Ex.81, NE 23, 953). On the same date Mr. Macpherson wrote to F. W. Johnson, Halifax representative for Northern,advising him of the appointments and asking him if he had any comments (Ex. 82, NE 22, 952).

With respect to the above three exhibits, Mr. Macpherson was examined in part as follows:

"Q. When you received a letter such as this, did you take any action?

A. In some cases they would be listed with the agents of other companies and in other cases they might not be put on the list immediately.

Q. Was there any reason for that, or was it just a matter of mechanics that there might be a delay?

A. There have been one or two cases to my knowledge where somebody has appointed an agent who had been somebody's agent prior to that and for reasons they had cancelled the agency because he did not do his job or did not do it the way he should have done it and therefore was not considered as a correct representative and in some cases this was pointed out or it was suggested he did not pay his bills or acted in a manner that might be detrimental to his principal."

(Evidence, pp. 219-20)

"Q. You asked in the last sentence of your memorandum of August 28, 1939, Exhibit 82: 'Any comments?'

A. Right.

Q. If comments were received, what would you then do?

A. Well, if there was some good and solid reason why those fellows, to our knowledge of the situation, did not appear to be able to act as proper agents, I think we would discuss the matter with Cables, Conduits and Fittings.

Q. And I suppose, where it states in Exhibit 81 that this matter will be brought up on the next convenient occasion, that might be at a meeting. Is that what is meant by a convenient occasion?

A. It could be.

Q. And if Northern Electric felt that these people were not reputable or reliable agents, what would you do about it?

A. I would talk to Mr. Longtin, Cables, Conduits and Fittings, about it.

Q. Would you discuss it with the other manufacturers before taking it up with Mr. Longtin?

A. I think I would talk to him first.

Q. With a view of doing what?

A. If they were not in our estimation the type of people who would be a credit, I would probably say to him why we did not think they were."

(Evidence, pp. 221-2)

Mr. Longtin of C. C. & F. was examined as follows:

"Q. Can you explain having appointed the agent, and in view of the appointing, Mr. Macpherson of the firm replying and saying that this matter would be brought up on the next convenient occasion?

A. He would probably bring us up on the carpet for doing it.

Q. Was that the usual practice?

A. We never thought we would have to discuss a manufacturer's agent supplying to other jobbers with any of our competitors. As a matter of courtesy we would tell them about it.

Q. Would it be correct to say some of your competitors would have discussed it? Is that what you meant by 'up on the carpet'?

A. Yes." (Evidence, pp. 938-9)

In the fall of 1939 Whites Hardware, Limited applied to C.G.E. for jobber prices on electrical wire. On October 2, 1939, C. S. Leary of C.G.E. sent out a memorandum to the other manufacturers advising them of the application. Mr. Leary stated that he had intended to discuss the letter, but now found it necessary to make an early reply. Mr. Leary asked the others to give the matter serious consideration and then to advise C.F.R. Jones of Northern (Evidence, p. 1483) of their recommendations. He further stated:

". . . We feel that their request is perfectly justified and as you will recall I discussed this with you earlier in the year.

Upon receipt of your replies, we will appreciate a letter from C.F.R.J."

(Ex.322, 2BIW25-298-1, 11723)

On November 1, 1939, T. A. Gass of Canada Wire sent a memorandum to the other manufacturers with reference to a prior memorandum from C. S. Leary of C.G.E. in which the latter had requested that MacMillan Electric Supply, Malartic, P. Q. be put on the jobbers' list. Mr. Gass stated, in part:

". . . My own understanding was that we were endeavouring to cut down the jobber's list and not increase same without sanction of the other Supply Manufacturers.

As far as this party is concerned we have no objections to their inclusion but believe the matter should be left over until the next Meeting for full discussion."

(Ex. 347, 2BIW25-325, 11755)

Mr. Smith of Federal sent out a memorandum on November 2, 1939, in which he stated that he was not at all familiar with the situation and would be pleased to have the matter discussed at "our next meeting". He further suggested that:

". . . in view of the fact of our recent jobber arrangement in Quebec and the fact that I presume this firm would come under the Quebec Jobbers Association supervision, this organization should be conferred with prior to our discussion."

(Ex.390, 2BIW25-330, 11763)

On February 23, 1940 C. S. Leary of C.G.E. sent out the following memorandum with regard to Zenith Electric Supply, Limited, Toronto, Ontario:

"I have before me an application from the above company for recognition as an electrical jobber for wire and cable.

It is my understanding that the principals involved are Mr. B.R. Steen, until recently connected with the Community Electric Supply Company, and Mr. H. L. Baker, who has been handling the Snap-it line of wiring devices in Canada for some time.

I believe this application has been submitted to other interested parties, and I would suggest that it be discussed at the next meeting."

(Ex.77, 2BIW27-31, 9927)

T. A. Gass of Canada Wire replied by memorandum on February 26 and stated that he had a similar application and had considered the past performance of Mr. Steen. Mr. Gass wrote in part as follows:

". . . after an interview with him [Mr. Steen], I am inclined to strongly recommend that the name of this company be added to the jobbers' list, either immediately or at the next meeting."

(Ex.78, 2BIW27-32, 9928)

The evidence of K. P. Macpherson of Northern with respect to Exhibits 77 and 78 was, in part, as follows:

"Q. On these circulating memoranda such as were sent out in these last two Exhibits 77 and 78, when the views of all the manufacturers had been obtained, what did you do then?

A. I would add it to my list.

Q. Would you advise the other manufacturers that such and such a jobber had been added to your list?

A. Sometimes I did.

Q. Did you act as the pivot point for the exchange of that information?

A. Well, at that time, as I have already told you, we were doing most of the work, and this was part of the work.

Q. This was part of the work you were doing for the industry, acting as clearing house for information; is that the proper description?

A. I will say that all information did not clear through the Northern Electric.

Q. Would you say that information on the appointment of jobbers cleared through Northern Electric?

A. I would publish the sheets; that is, typewrite the sheets and send them to other manufacturers after changes had been made in the list.

. . .

Q. Who would make the decision at the next meeting as to whether this man was to be added to the list?

A. If it came out at the meeting, as it did on a number of occasions, the man was already on the jobbing list, put on there by one manufacturer without consultation with others, then I say, as I said before, this was added to the newspaper that showed all the jobbers.

Q. Supposing he had not been already placed on the list or was not being sold on the jobbers' list basis, but supposing it was a bona fide example of somebody saying they had received an application from so and so to be placed on the jobbers' list. What decision or action would the meeting take on that?

A. The meeting would decide whether that man was a man who should be put on their list or not, or a firm.

Q. As a result of the decision which was made at the meeting you would issue this type of newspaper information you have referred to?

A. That is correct." (Evidence, pp. 210, 213-4)

Throughout the questioning with regard to these two exhibits, Mr. Macpherson maintained that someone had been selling Zenith Electric at jobbers' prices prior to their application to be placed on the jobbers' list. He further maintained that when it was ascertained that a firm was being sold at jobbers' prices by a wire and cable manufacturer that firm's name was immediately placed on the jobbers' list.

Exhibit 395, dated October 17, 1940, was identified by T. J. Bell of Federal as being an agenda for a meeting of manufacturers and, apparently, electrical wholesalers. The several sheets attached to the agenda were identified by Mr. Bell as being "a list prepared by the electrical distributors outlining the people that were considered jobbers" in the various categories shown, e.g., wiring devices, wire and cable, friction tape, etc. Mr. Bell identified the handwriting on the documents as that of J.G. Smith of Federal. The handwritten notes indicated that Locke Graham and K. P. Macpherson acted as secretary and chairman, respectively, for the meeting held on October 17, 1940. Item 4 on the agenda was:

"4. Jobbers - (a) Uniform List
(b) Grading of Jobbers"

(Ex.395, 2FED4-17 and 2FED4-16 to 4-16-6, 14222-14228)

Mr. Bell said that the meeting was held at the suggestion of the electrical jobbers in order to clarify some problems that were common to the wire and cable industry and distributors alike. He was questioned as to whether it was possible for a firm to be placed on the recognized jobbers' list if it was not a member of the Canadian Electrical Distributors Association (commonly referred to as CEDA). Mr. Bell said it would be possible for some manufacturers to make such an appointment, but highly improbable that Federal would do so. He stated that before a discussion took place with respect to the placing of a firm's name on the recognized jobbers' list, the firm had already been allowed a jobber's discount. Mr. Bell was further questioned on this point:

"Q. If there was never a case came up in which somebody had not already been appointed a jobber, what was the purpose of discussing the matter at the meeting? Was it with the idea of having whatever manufacturer had appointed him put forward his appointment?

A. I will answer your question from the point of view of the Federal Wire & Cable Company. We have a small group of distributors from Halifax to Vancouver that distribute our products. Our primary interest is to keep those distributors strong. We feel that nothing can be gained by adding people to that group who do not perform their proper function in the merchandising of electrical products, so if one of our competitors puts people on that list that we felt had no place in the system of distributing and merchandising, we would object to it from this point of view, not to correct what had been done but to try to prevent that in the future.

. . .

THE COMMISSIONER: Q. Mr. Bell, in discussing the appointment of wholesalers, were you also interested in avoiding a situation where one manufacturer recognizes some one as a wholesaler and allows him the wholesaler discount, and another would not do so because they would confict with your policy on selling?

A. No, we are primarily interested in the restriction of unqualified people to keep it in the hands of people who are capable of doing the job properly. In the distribution of wire and cable and electrical products the independent manufacturers have to contend with the competition of the national distributors who not only manufacture but distribute through their own branch offices wire and cable. Our outlets are not through branch offices but through independent jobbers and it is those independent jobbers we want to support and keep healthy. When a discount is given to people who, perhaps, sell their material from door to door and with no overhead and no method of properly distributing the product we thought that was a mistake. If we were to promote the adoption of a sort of a holus-bolus appointment of people unqualified to be jobbers we were weakening the economic position of our jobbers."

(Evidence, pp.1919-21)

On December 1, 1941 C. S. Leary of C.G.E. sent a memorandum to the manufacturers asking for their consideration and decision regarding the proposed appointment of Hickman Tye Hardware Co. Ltd., Victoria, B.C., as agents for C.G.E. He stated:

"As we carry no stock of wire and cable in Victoria, B.C. we would like to appoint the above company as our agent at that point.

Will you kindly give this matter your consideration and let the writer know your decision."

(Ex.322, 2BIW27-553, 10508)

A memorandum dated August 31, 1944 originated with C.G.E. and was designated for Northern only. It stated that C.G.E. had been informed by its St. John district representative that R.H. Patterson, agent for Phillips, had consigned stocks of rubber covered wires, cords, Philex and ABC cable on the premises of Electric Supplies Ltd. and the New Brunswick Power Company and, also, consigned stock of rubber covered wire, cable, cord Philex and ABC cable on the premises of Canadian Fairbanks-Morse Co. Ltd. The memorandum quotes as follows from the letter received from the C.G.E. representative:

"Since it is our understanding that this is not in accordance with the sales policy covering this product line, it would be appreciated if you could investigate the situation and endeavour to have it cleaned up. . . . Obviously anything you can do to assist us will be appreciated and we look forward to hearing from you."

(Ex. 83, NE 21, 951)

When examined with respect to this document, Mr. Macpherson of Northern said that the question raised was that of having consigned stock "in the premises of a user rather than of an agent", and, although he did not know what policy was referred to, he said that there had been some argument about consigned stock (Evidence, p.225). C. S. Leary of C.G.E., when examined with reference to this document, said that the wording of the document "would indicate that it is a policy of all manufacturers"(Evidence, p. 1507). Mr. Leary was further examined as follows:

"Q. Now, what was the reason for sending it to Mr. Macpherson?

A. I assume that he would bring it up at some meeting that would be held at some future date.

Q. Was that a usual practice in the industry to refer matters such as this to Mr. Macpherson so that it would be brought up at a meeting?

A. I don't know about the industry. It was what I did."

(Evidence, p. 1508)

On March 21, 1946, Northern sent out a memorandum attached to which was an agenda for a meeting of manufacturers' representatives to be held on March 28, 1946. Copies of the memorandum were designated for all of the other manufacturers. Item 1 of the agenda was as follows:

"1. Unfinished Business
1.1 Report on Jobber Applications
1.1.1 Electrical
1.1.2 Radio"

(Ex. 278 and 94, CCF98 and 98A, 2000-01)

K.P. Macpherson of Northern was examined, in part, as follows with respect to the agenda portion of Exhibits 278 and 94:

"Q. Do you recall whether the items indicated on the agenda were in fact discussed at the meeting held on March 22, 1946?

A. I believe so.

. . .

Q. And item No. 1 refers to 'unfinished business; report on jobbers' applications'. I take it that is the subject that we were discussing this morning. The manufacturers would discuss these applications and decide what they would do about it?

A. Yes, I tried to explain this morning the jobbers' situation and we were trying to have jobbers appointed who would be a credit to the industry. That was part of the reason. The other part of the reason was jockeying for positions.

Q. Competitively?

A. That is so.

Q. I take it the manufacturers had an interest in the jobbers' point of view you mentioned a few minutes ago when you were talking about the distributors. That is, you wanted to be sure they were jobbers because they were the ones who had to pay for the material; is that correct?

A. Yes. It is a question of credit, as I mentioned this morning. It is also a question of somebody whose normal business is peddling bananas. That is an example of a man who should not be selling electrical supplies."

(Evidence, pp. 242-4)

On April 3, 1946, P. A. Timmons of Automatic stated as follows in a telegram to T. A. Lindsay of the same company:

"Reference your letter March 8/46, CEDA in view of all jobber applications being turned down, suggest you advise Mr. Edmunds of this and also that all such applications are being carefully screened before consideration is given."

(Ex.252, AEL17-6, 20)

On October 1, 1947, T. A. Gass of Canada Wire sent out a memorandum with respect to the General Supply Company, Hamilton, in which he stated:

"With reference to S' memo of September 30th, we do not recollect selling this party but if we did we certainly would not allow them any discount since they do not appear on the Jobbers' list."

(Ex. 181, 2BIW19-1, 9254)

When examined with respect to the above memorandum, J. H. Fitzgerald of Phillips explained his understanding of it as follows:

"Q. What is your understanding of this memorandum?

A. Simply that Canada Wire & Cable would not sell the General Supply Company on the jobber's discount as they were not on the list.

Q. When you say they were not on the list, the phrase that is used is jobber's list, I believe?

A. Yes.

Q. Is that the same as the list you referred to this morning as the wholesaler's list?

A. That is right.

Q. At the time to which this memorandum makes reference, that is, in October, 1947, was that a jobber's list which each manufacturer had, or was it the same list for all manufacturers?

A. In general, I think it was the same because they were circulated.

THE COMMISSIONER: Q. Was the understanding, Mr. Fitzgerald, that you would not allow a jobber's discount to anyone other than a jobber on the list?

A. That was generally the understanding, Mr. Commissioner, I do not think it was always carried out.

Q. Was there an understanding that you would sell to no one that would not be on the jobber's list regardless of discount?

A. No, we have never refused to sell to anyone.

Q. So, being on the list allowed them the privilege of the discount?

A. Yes." (Evidence, pp. 671-2)

G. W. Arnold of Boston replied as follows when questioned with respect to Exhibit 181:

"Q. This is a document which was removed from the files of your company. Was this the type of memorandum which was frequently exchanged between manufacturers?

A. Not frequently, because this question seldom came up.

Q. That is the question of who you were going to allow the jobber discount to, or who you were going to put on the list?

A. Yes.

Q. You say it did not come up very often?

A. No, the list was pretty well settled.

Q. Do you mean that it was not discussed very often at meetings or just that it was not discussed by way of memoranda?

A. It was not discussed by way of memoranda.

Q. Would it be correct to say that most of the discussions or exchange of information took place at the meetings?

A. Yes." (Evidence, p. 1307)

In 1949 there was an exchange of memoranda with respect to Phono Motors Limited, Toronto, being placed on the "manufacturers' list" and thus being entitled to buy at a special discount from the regular list price. The following memorandum dated January 15, 1949, which was found in the files of Automatic, originated with Federal (Evidence, p. 680):

"This company is buying magnet wire at the regular list price and has been since they started winding coils. They

are engaged in the manufacture of fans and record changers for record players.

We were instrumental in starting them in this business and are, I am quite sure, their prime source of supply for magnet wire. They have not at any time pressed us for better prices than they are receiving until a salesman from one of the other companies suggested to them that they might perhaps buy on a better list.

Personally, I think this is a poor type of competition and certainly anyone can sell wire if they cut the price. On the other hand, this company is definitely in the manufacturing business and, I believe, should be placed on the manufacturers' list since at the present time they are much more entitled to this than the Alliance Tool and Motor Co. This company is practically defunct and I would suggest they be taken off this list.

If convenient, I would suggest that Phono Motors be put on the list no sooner than February 1st and I would appreciate comments on this point.

At no time has this company or any other company to which we sell magnet wire been extended prices to which they were not entitled according to the list published in the price book. I think this practice should be followed religiously."

(Ex. 216 and 87, AEL 6-25, 258)

A memorandum dated January 17, 1949, in reply to the above, was also found in the files of Automatic and appears to have originated with Canada Wire:

"Re: Magnet Wire - Special Listing

With reference to 'S's' memo of January 15th, we are quite agreeable to Phono Motors Limited being placed on the Manufacturers' list, providing all are in accord.

Concerning the Alliance Tool and Motor Company, we would prefer to have them left on the list until we have had an opportunity of discussing it further.

Regarding the Pye Canada Limited, we understand on the strength of our memo of December 29th 'B' has already quoted them Manufacturers' prices and we would therefore suggest that they be added to the Manufacturer's list, effective immediately.

We understand it is agreed that the Ainsworth Electric Company, Toronto, be given special prices and would appreciate receiving confirmation of this before quoting."

(Ex. 88, AEL 6-26, 259)

In a memorandum dated January 18, 1949, to J.H. Fitzgerald of Phillips, T. A. Lindsay of Automatic referred as follows to Federal's memorandum of January 15:

"Referring to the memo on the subject company dated January 15th, I have been informed by Mr. Brazier that we have sold this company solely on a list price basis to date. So far as their Magnet Wire requirements are concerned, the customer has not questioned our price nor asked for any consideration. We understand that Federal supplies them with the bulk of their Enamel Wire requirements due to the fact that they stock the sizes which Phono-Motors require on the size and type of spool which the customer specifies. We are presently investigating this situation to determine if we cannot get a better share of their business.

It is our feeling that either Canada Wire or C.G.E. are attempting to get in on this business and have broached the question of special prices. There is, however, no question but that they should qualify for Manufacturers' prices due to the amount of Magnet Wire they are now using. We would be agreeable to the suggestion of having this firm put on the Manufacturers List as at February 1st.

(Ex.186, AEL6-24, 261)

Several witnesses were examined as follows with respect to this incident:

J.H. Fitzgerald of Phillips:

"Q. Could you explain what the situation was with regard to this company Phono Motors Limited; what was the occasion of this exchange of memorandum?

A. There are three levels of prices on magnet wire; one for regular resale and to special customers such as motor repair shops and three manufacturers, the manufacturers being listed. In order to get on the manufacturers' list, of course, the customer in question must be a manufacturer of electrical equipment dealing with magnet wire in quantity.

Q. Was this, therefore, an instance where Phono Motors Limited had made representations to one or other of the manufacturers as a result of which the manufacturers concerned had raised the matter with the other manufacturers with a view to having this Company placed on the manufacturers' list?

A. That is correct.

Q. Could you say from either your knowledge of the situation or from refreshing your memory from these documents whether in this case there was an agreement by the manufacturers and whether the Phono Motors Limited was placed on the manufacturers' list?

A. No, I can't remember whether or not they were put on the list."

(Evidence, pp. 679-80)

T.A. Lindsay of Automatic:

"Q. There is what you call the manufacturers' list?

A. Yes, that applies on magnet wire.

Q. This was an instance of where one manufacturer was asking the inclusion of a certain company on the manufacturers' list?

A. Yes, that is what it boils down to.

Q. Do you recall whether this Phono Motors Limited was subsequently included on the manufacturers' list?

A. Yes.

Q. Was it the usual practice in the industry to circulate the name of an applicant to obtain the views of the other manufacturers prior to putting some one on the manufacturers' list?

A. Yes." (Evidence, p. 763)

The evidence of F. W. Barnhouse of C.G.E. (Evidence, pp. 1607-9) and K.P. Macpherson of Northern (Evidence, pp. 234-5) confirmed that of J.H. Fitzgerald and T. A. Lindsay. Mr. Barnhouse said that the "list probably referred to a list of manufacturers' names who purchase large quantities of magnet wire." He further stated that all manufacturers on the list would receive a special discount and that normally the agreement or arrangement was that prices to customers who were not on any special list should not be lower than the published list prices.[1]

On January 26, 1949, L. S. Caveney, from the Montreal office of Automatic, sent a memorandum to T. A. Lindsay of Automatic and attached a letter from "Foulis and Bennett alleging certain unfair practices on the part of Union Electric". Apparently Union Electric, an electrical wholesaler, had reduced the price of certain non-metallic sheathed cable, which it had imported from the United States, below the regular Canadian prices. L. S. Caveney discussed the matter with L. Naimer of the Union Electric and was assured by Mr. Naimer

---

1. The written returns to the Commissioner requested from the wire and cable manufacturers on June 11, 1952 indicate that the magnet wire customers have been classified into several classes as follows:

(1) Casual customers purchasing at trade list prices.
(2) Special customers--the larger motor repair accounts.
(3) Manufacturers--the larger equipment manufacturers.
(4) Special large apparatus accounts consisting of a very few manufacturers.

Uniform customer lists and uniform discounts have been established for classes (2) and (3) above. The manufacturers of magnet wire in January 1949 were Northern, Phillips, Canada Wire, C.G.E. and Federal. The returns indicate that Northern, Automatic (sales agency for Phillips) and Canada Wire added Phono Motors Limited and Pye Canada Limited to their lists for class (3) above on January 28, 1949, while C.G.E. added Pye Canada Limited on January 7, 1949 and Phono Motors Limited on January 27, 1949. Northern and Automatic added Ainsworth Electric Co. to their Special Customers' lists on January 28, 1949, Canada Wire added Ainsworth Electric Co. to the same list on January 7, 1949, while C.G.E. did not submit a list of Special Customers for magnet wire. Federal did not submit any lists of recognized magnet wire customers.

that there had been a price reduction on non-metallic sheathed cable in the United States and, since Mr. Naimer expected a similar fall in Canadian prices, he was "attempting to take as small a loss as possible on the American material". Mr. Caveney concluded:

> ". . . Mr. Naimer stated that he was quite willing to give us copies of his correspondence in this matter and left the writer with the impression that he is not undertaking any action intended to upset any existing price arrangements."
>
> (Ex. 224, AEL 6-32, 262)

In handwriting at the bottom of this exhibit was the notation: "Asked LSC to Destroy F & B letter". Mr. Lindsay, in evidence, identified the handwriting as his own and said that "LSC" stood for L.S. Caveney and "F & B letter" for Foulis and Bennett letter. He also said that wholesalers purchased at list price less a discount of 15 per cent and that it was suggested to the wholesalers that they resell at the list price as established by the manufacturers. Mr. Lindsay admitted that occasionally when a wholesaler did not maintain the suggested selling price someone went around to see him in order to discuss the matter with him, but they did not "force" a wholesaler to sell at the suggested price (Evidence, pp. 776-82).

On February 25, 1949 T. A. Gass of Canada Wire sent out a memorandum, copies of which were to go to "all interested parties", in which he stated, in part:

> "I would like to suggest, after looking over the agenda of the meeting on March 2nd, that the following should be thoroughly discussed and we should all come prepared to discuss same:
>
> (A) Definition of an agency point
> (B) Definition of an acceptable agent
> . . .
>
> In connection with item A above, our own understanding of an agency point is 'a recognized agency point shall be any place where General Electric Company and/or Northern Electric Co. maintain an office and warehouse stock.' Do Sales Offices constitute an agency point? Do local Salesmen constitute an agency point?
>
> Regarding item B above, our understanding is that an agent should not be an electrical contractor or carry on a contracting business, nor should he be an associate or affiliate of a Public Utility or other user.
>
> An agent may be an individual or firm of commission agents or wholesale hardware or wholesale electric supply house. Consideration of agents should be confined to the above type (?) . . ."
>
> (Ex.62, 2BIW12-3, 9221)

Several witnesses were questioned as follows with respect to the above document:

G.W. Arnold of Boston:

"Q. I show you Exhibit No. 62, which is one of the documents removed from the files of your Company. Can you identify the signature on that document?

A. Yes, sir, Gass.

Q. Would you refer to the item 'A', the definition of an agency point, and can you say what is the present practice or policy in the industry with regard to an agency point, or how it is defined to-day?

A. Paragraph (d)[1] explains the whole thing.

Q. Is that your understanding of what an agency point is to-day?

A. Yes.

Q. Then what about the two queries that are raised at the end of the same paragraph; can you answer those for us in the light of to-day's practice or policy?[1]

A. No, I could not. I think they would rather have warehouses.

Q. Where either Canadian General Electric or the Northern Electric maintain a warehouse?

A. Yes.

Q. That is your idea of an agency point?

A. That is true." (Evidence, p. 1340)

W. R. Greenshields of Triangle:

"Q. I show you Exhibit No. 62. Do you recall whether you received a copy of that document, Mr. Greenshields? It is dated February 25th 1949. Perhaps if you might refer to the second paragraph of the document where there purports to be a definition of an agency point, and I think that was a matter we discussed this morning, and I was going to ask you if this was, to your knowledge, a discussion which had taken place at a meeting of manufacturers and whether this definition of an agency point is in accordance with your understanding?

A. Yes, I recall this being discussed.

Q. I just wanted to confirm if my understanding was correct that an agency point - I think you explained that this morning that it was your understanding that the industry considered it wherever Canadian General Electric and Northern Electric had a branch?

---

1. Presumably the witness meant the second paragraph of Exhibit 62, as queries only appear in that paragraph.

A. That is right, had a branch office.

Q. And I take it from this memorandum - which I believe is signed or initialled by Mr. Gass, is it?

A. Yes.

Q. That this was a matter which had in fact been discussed at a meeting of the manufacturers?

A. That is correct? (Evidence, pp. 1440-41)

C. S. Leary of C.G.E.:

"Q. Would you refer to the second paragraph and the quotation within the paragraph which appears to be a definition of a recognized agency point. Does that constitute the accepted description of an agency point? When I say 'accepted', I mean accepted by the Industry or the manufacturers.

A. It may have at one time, but I don't believe it represents that to-day."

(Evidence, p. 1519)

The first item on the agenda of a meeting of manufacturers' representatives dated June 8, 1949 was "Distribution" and two pages of handwritten notes were attached to a copy placed in evidence (Ex. 193, 2BIW14-2-1, 14-2-2, and 2-2-3, 9228-30). G. W. Arnold of Boston was questioned as follows with respect to the handwritten notes:

"Q. And the handwritten notes which appear on the second and third pages at the top states, Toronto, June 8, 1949?

A. That is one of the rare times I took notes.

Q. These would be notes taken by you at a meeting at which the persons appearing in the top left hand corner of the second page were present?

A. Yes, sir, it is like my letter I wrote. It was the only letter I wrote and this is the only time I took notes at a meeting."

(Evidence, p. 1344)

Part of item (1) of Mr. Arnold's notes was as follows:

". . . Added to list - Daignault, George, Montreal.
Wiring Supplies - Conduit - Boxes - 15% from C.G.E.
Gray - Electric also mentioned Jan. 11th.
R.T. Holman and Rogers Hardware Prince Edward Is. getting 15% from some one.
Keith Brokerage as Bell's agent in St. John's, New Brunswick.

Bell's Agt's. Electrical Distributors Truro
" " Noonan W.H. - Mfgrs. Agents for Bell
Electrical Wholesalers - Bell - Cancelled.
Geo Ellis Ltd - Bell's New Agent
Can. Fairbanks Hardware - Edmonton - C.W. Cancelled

- Vancouver - C.W. Cancelled.
Black & Co. Vancouver - Industrial changing from 15% to 6%
Harry Coopers - Mahon Electric - Jobber only.
Northern - no agent for any other company is solicited for business or given agents commission . . ."

(Ex.193, 2BIW14-2-2, 9229)

On September 9, 1949, J. H. Fitzgerald of Phillips sent the following memorandum to Canada Wire, Northern and C.G.E. with respect to Ideal Electric (Western) Limited:

"Will you kindly advise us your understanding of the above company's status as a Wholesaler.

We understand that M's office and ours have been extending them Wholesale prices on the basis that they are a branch of Ideal Electric Incorp. and that G & B's office do not consider them as wholesalers.

We understand that Ideal Electric (Western) Limited is an affiliate company and not a branch of the Toronto or Montreal firms and on these basis there is no reason why they should be extended wholesaler's prices.

May we have your comments:"

(Ex. 187, CWC31-7, 2641)

When questioned with respect to this document, J. H. Fitzgerald stated that he believed the memorandum originated as a result of an application by Ideal Electric (Western) Limited to Automatic to be placed on the wholesalers' list (Evidence, pp. 681-2).

On April 12, 1950, D. C. Brazier of Automatic wrote to J. H. Fitzgerald with respect to Ideal Electric, Vancouver. He stated:

"Note you recently had T.A.L's file on this operation - was anything discussed or decided at the recent meeting.

The local manager keeps on plying me for info as to why we won't recognize his Vanc. branch - I won't be able to stall him forever - our local business will suffer."

(Ex. 188, AEL 3-4, 376)

J. H. Fitzgerald replied as follows on April 13, 1950:

"What with one thing and another this wasn't discussed, however it is recognized that if any branch of a firm is on the wholesalers list, then all branches are recognized and I can't see that we could make any exception for any Company.

I think the answer to this lies in Vancouver. Apparently they have made some arrangement locally and I think TAL will have to come to some decision based on the value of the Customer's eastern business. If we sell at all the Company is entitled to wholesaler discounts."

(Ex. 188, AEL 3-4, 376)

J. H. Fitzgerald was examined as follows with respect to Exhibit 188:

"Q. Mr. Fitzgerald, is there any reason why the Automatic Electric could not have appointed this branch in Vancouver or put it on the wholesalers' list if it wanted to do so?

A. Not if they are a branch of the Eastern firm who are on the list.

Q. Supposing it was not a branch of the Eastern firm, is there any reason why the Automatic Electric could not put it on the wholesalers' list if it wanted to?

A. Not that I know of, if they felt them qualified.

Q. I note in the first part of Exhibit No. 188, which I think you identified as the handwriting of Mr. Brazier to yourself, it states:

'Note you recently had T.L.'s file on this operation. 'Was anything discussed or decided at the recent meeting.'

What meeting is referred to there?

A. That would be the meeting of the industry.

Q. And T.L. is Mr. T. A.Lindsay?

A. Yes.

Q. In this particular case it was decided that Automatic Electric should refer the matter to a meeting of the manufacturers before putting this branch on the wholesalers' list?

A. That is right.

Q. Notwithstanding the fact that you could have put it on the wholesalers' list without reference?

A. That is right." (Evidence, pp. 683-4)

On March 26, 1951, a memorandum was sent out asking that Vandry Incorporated be deleted "as our agent in the Quebec district" (Ex. 189, 2BIW 1-2, 9165). On August 8, 1951, a memorandum was sent out which stated as follows:[1]

"Confirming our verbal advice in June, the above [Vandry Incorporated] have been appointed our agents at Chicoutimi and we would appreciate it if M would add them to the list of agents."

(Ex. 189, 2BIW 9-1, 9194)

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1. Automatic's written returns indicate that Vandry Inc. was deleted from their list of Canada Wire's agents on April 5, 1951, and added as Automatic's agent on August 22, 1951.

V. N. Longtin of C.C. & F. was questioned with respect to the above memoranda:

"Q. Is there what one might call, a gentleman's agreement as to how many agents there are going to be at a particular location?

A. No limit on agents. You can have as many agents as there are companies to appoint them.

Q. Are there any agents at locations where another manufacturer hasn't got a branch?

A. I think there are a few cases.

Q. In meetings of the whole group is the subject of location of agencies discussed?

A. It has been.

Q. With a view to what?

A. Well, with a view to keeping agents down to where branch offices are distributing points, not getting them spread out into small towns.

Q. And what is the advantage of that from the point of view of the manufacturers?

A. If manufacturers' jobbers have warehouses with stock in, say, about forty different towns across the country, and if we have no agency there with our stock we are at a disadvantage. We lose the business.

Q. Yes, that is from a competitive point of view. If one of your competitors has a branch office or a jobber's agent then you want an outlet there to compete with it?

A. If possible, yes.

Q. But recognizing that feature, is there any other reason why manufacturers should be interested in keeping down agents from spreading around the countryside as you say?

A. New centers would be created. It is the main cities that really are the distributing points.

Q. Is that the sort of discussion that takes place at the meetings, of keeping distributing centers in the larger areas?

A. Along that line. We stray from that occasionally, if a new boom town; a new locality."

(Evidence, pp. 920-1)

Exhibit 321, entitled "Minutes of Meeting Held at Caledon Trout Club, June 12 and 13, 1951" contains the following references to wholesalers and agents:

"Distribution

2.1 Wholesalers

(a) Lemery's Limited no longer listed.

(b) T.J.B. was provided with a lengthy list of new wholesalers or potential wholesalers which he is checking. This list will be circulated at an early date.

(c) Industrial are selling Thomas Electric, of Barrie, and, for the time being, no one else is considering doing so. It was agreed that Gorn Electric, of Montreal, could be sold at wholesalers prices. Canada Wire report that Wood Alexander and MacDonald are getting an additional 5% on Weatherproof Wire.

2.2 Agents

New agents were listed by companies concerned."

(Ex. 321, 2TWC 1-1-2 to 1-1-3, 8509-10)

Although Exhibit 321 was found in the files of Triangle, W. R. Greenshields of Triangle stated that he did not know where it originated. The person referred to as "T.J.B." in part (b) above, Mr. Greenshields identified as Tom J. Bell of Federal. With reference to item "b", Mr. Greenshields was questioned in part, as follows:

"Q. Now, do you recall whether one of the functions that he performed for the industry was to check the list of jobber applicants?

A. I do recall, yes. I think he made a statement that he had no list at all or half the list that the industry had, and he wanted to know whether they were to put on and why he had not been notified. I think probably that was the answer to that. There was discussion about it.

Q. What I am interested in finding out, was this the reason that it was referred to him in this instance, or is that something that he did all the time for the rest of the industry?

A. No, no, he didn't.

Q. It was just in this particular case?

A. That is right." (Evidence, p. 1443)

On June 14, 1951, a memorandum was sent out which stated:

"There has been some discussion as to whether or not the attached list of accounts are to be considered jobbers. Would you please advise whether or not you extend jobbers' discounts to any of the names shown on this list."

(Ex. 130, 3NE 11-9-2, 4488)

Attached to the memorandum are two sheets containing the names and addresses of various firms (Ex. 130, 3NE11-9-4 and 11-9-5, 4490-91).

C. C. & F. replied on July 5, 1951, stating that they had checked the list and "that the only firm which we are recognizing as wholesalers on this list are Dunlop Bros. in Amherst, Nova Scotia" (Ex. 130, 3NE 11-9-6, 4492).

A further unsigned memorandum dated July 6, 1951, indicated that the inquiry as to the list of firms referred to above originated with C.E.D.A. The memorandum stated:

> "We have received a further memo from C.E.D.A. regarding wholesaler accounts to be checked as to whether or not we recognize these accounts as wholesalers.
>
> I think it would be wise if we were to have early action on the list I circulated to you on June 14th, 1951."
>
> (Ex. 130, 3NE 11-9-8, 4494)

An unsigned memorandum found in the files of Boston, entitled "Electrical Wholesalers" was sent out on July 24, 1951 and referred as follows to a new listing of Electrical Wholesalers for Western Canada sent out by Northern:

> "We note M has issued a new listing of Electrical Wholesalers for Western Canada to include Wholesale Electric Limited, Vancouver.
>
> We believe there is some misunderstanding in this connection as, to the best of our knowledge, this account does not qualify and we would suggest no action be taken until M returns from vacation and this point clarified."
>
> (Ex. 266, 2BIW9-2, 9195)

Several witnesses were examined with respect to Exhibit 266 and explained as follows the practice of circulating lists of wholesalers among the manufacturers:

<u>G.W. Arnold of Boston</u>:

"Q. Was that one of the functions of the Northern Electric or Mr. Macpherson, to issue the list of wholesalers?

A. He would issue lists at times.

Q. And circulate it to the other manufacturers.

A. Yes.

Q. Would those lists be the lists of jobbers or wholesalers who had been agreed upon at the meetings of the manufacturers?

A. Usually.

Q. I think this list has been referred to in some other instance as the jobber's list?

A. That is right." (Evidence, p. 1308)

V.N. Longtin of C. C. & F.:

"Q. Did you ever see listings of electrical wholesalers referred to in this memo?

A. I am not sure if I saw the same list, but I have seen a list.

Q. Is it revised from time to time?

A. Yes.

Q. Who revises it?

A. We receive it from the Northern Electric Company.

Q. They send you the revisions?

A. Along with quotations.

Q. Who decides on the revisions to the list?

A. I think it is every time the group gets together, and somebody admits selling to this party or to that party at wholesalers' or jobbers' prices.

Q. You say a group gets together? Are you referring to a meeting of the manufacturers?

A. Yes.

Q. And it might subsequently be incorporated in a form of revision to the list?

A. That is right. It naturally would be.

Q. And this would likely point out or query one company that appears on the list; is that right?

A. Yes." (Evidence, pp. 921-2)

C. S. Leary of C.G.E.:

"Q. During the period 1930 to 1945 were there lists of wholesalers published?

A. Yes.

Q. And who published them?

A. It originated with Mr. Macpherson at that time.

Q. I see, and he would circulate it to the other manufacturers, would he?

A. That is correct.

Q. And that, I take it, was just for information?

A. That is all it was." (Evidence, p. 1509)

Exhibit 129 consists of lists of electrical wholesalers, some of which are handwritten work sheets. The entire exhibit was prepared by Northern and appears to be a comparison of the names of wholesalers appearing in the Master Book (the wire and cable wholesalers) and those appearing in the X Section of their general price book (all of the electrical wholesalers, including the wire and cable wholesalers). A covering note dated February 13, 1952, signed by S.H.R. Clish of Northern, states:

"Wholesalers lists showing discrepancies between Master and X Section.

Suggest Messrs. Carson, Borden and Clish discuss these sheets before next meeting."

(Ex. 129, 3NE11-4-1 to 3NE 11-4-25, 4453-77)

D. C. Borden of Northern was examined as follows with respect to Exhibit 129:

"Q. Were these sheets subsequently discussed at the next meeting, and I presume the next meeting is the next meeting of the representatives of the manufacturers?

A. There have been discussions as to wholesalers. This is dated February 12th and there may have been discussions of wholesalers since that date. I cannot relate them very closely to the sheets, but, at any rate, there have been discussions.

Q. As to the appointment?

A. Yes.

Q. As to who was going to be appointed and who was not going to be appointed?

A. Yes, if you look at it only from the Northern Electric Company's point of view there was a difference in this between the Manufacturing Division and the General Sales Division as to whether they were wholesalers or not. The General Sales Division has contended in the past, they wanted to have wholesalers appointed rather more freely than we wanted them to, and the discussions that took place in the meeting had influence but I know I insisted that anything that comes out of this meeting is not mandatory, but it certainly does influence us. That is essentially an internal discussion and whether we could not agree we waited until we had an opportunity to discuss it with the other people and see what their thinking was."

(Evidence, pp. 508-9)

On February 21, 1952 D. C. Borden prepared a memorandum entitled "Notes from February 20th Meeting". The memorandum, in part, states:

"The following wholesaler appointments are not settled. N.E. to review any on which an asterisk is shown: [A list of 12 names follows, with an asterisk beside Moncton Hardware, Moncton; A. G. Letourneau, Victoriaville and Spinney, Yarmouth]

. . .

We are to check if Thompson Sutherland are N.E. Agents.

The following agents are to be added:-

| | |
|---|---|
| Cockrane Stevenson Western Ltd. | I.W.C. |
| Mahon Electric, Fort William | F. |
| Niagara Vallance Brown, St. Catherines | C.C.F. |

Thought is to be given to a new geographical study of permissible agency points."

(Ex.121, 3 NE 4-2-2 and 4-2-3, 4324-5)

When questioned with respect to Exhibit 121, D. C. Borden stated that the February 20 meeting referred to was a meeting of manufacturers' representatives and that the various subjects referred to in the memorandum were discussed at the meeting. He further stated, when questioned with respect to the "new geographical study of permissible agency points" referred to in the second last paragraph, that:

"The word 'agency' refers to a different selling arrangement from wholesaler or jobber. There are non-wholesale items, such as power cable, a manufacturer sells them through its agency. These agents might be and are very often the same company as the wholesaler but not necessarily."

Some years ago, he said, it was agreed that agencies would be opened only at certain points, generally only where Northern and/or C.G.E. had warehouses; this arrangement was not for the protection of anybody, but was merely a convenient way of deciding when a city was big enough. He said that recently this system "worked some hardships" and:

"the people who want to appoint agents were trying to do away with this unwritten rule and it was pretty well admitted that it was out of date and ought to be revised. . . . The number of agents had to be increased because of the growth of the wire and cable business, so it has been found best to move slowly so instead of this concern saying, 'We are going to have an agent anyhow,' they get together at this meeting and say, 'Let us change the rules, but let us do it in an orderly fashion. That custom is out of date so let us change it, but in the meantime we won't jump off.' As a matter of fact, they did jump off, anyhow.

Q. When they did jump off was there this competitive flurry that you referred to across the country?

A. No, there were instances of it but it didn't happen. The reason it didn't, people just didn't want that. It is like starting a war. It makes you feel good at first but not so good at the end.

Q. You are speaking of the manufacturers?

A. Yes." (Evidence, pp. 471-4)

A. A. Wagman of Industrial when examined generally with respect to the recognition of wholesalers by the manufacturers, stated that occasionally wholesalers applied to a manufacturer to be put on the wholesalers' list. Mr. Wagman said that the background, sales ability, stock and salesmen of the wholesaler would be discussed at meetings. According to Mr. Wagman, it frequently occurred that a customer received the wholesaler's discount before his recognition had been discussed with the other manufacturers, but "quite frequently they would have a lot of requests from people outside of the electrical field that would want to become electrical wholesalers and they would be brought up" at a meeting. Mr. Wagman said that he had put wholesalers on his list before discussing them with his competitors, but it was not a "usual practice" (Evidence, pp. 1990-2). Mr. Wagman was further questioned as follows with respect to the purpose of discussing the appointment or recognition of jobbers or wholesalers.

"Q. Would you say that the manufacturers of wire and cable were anxious to restrict the number of jobbers and the wholesalers? Was that the purpose of discussing the appointment or the recognition at these meetings?

A. Well, it would be to the manufacturers' interest not to have too many weak outlets in any particular area, because in our own particular case we depend upon the independent wholesalers and we have got to keep them as strong financially as possible, and our own company would not want to appoint too many distributors in any one area. In the first place, we would get our regular independent wholesalers angry at us and it would not be in the best interests of our company.

THE COMMISSIONER: Q. How do you define your regular, independent wholesalers?

A. Oh, wholesalers who have been selling over the past ten years."

(Evidence, p. 1992)

Further evidence of a more general nature in support of my allegations respecting the classification of customers, is found at pages 603-5, 712, 717-8, 720-1, 1372-4, 1435-6, 1805-6 of the transcript.

6. Discounts

Various agreements and arrangements have been made by the manufacturers from time to time at meetings, by telephone, memoranda and otherwise to establish common and uniform policies with respect to the rates of discount that were to be allowed to various classes of customers. The evidence shows that the rates of discount that were to be allowed to the various classes of customers were the same for all manufacturers. It further shows that generally the discounts agreed upon were to be deducted from the list prices, which were identical for all manufacturers. Uniform rates of discount have been established by agreement for the following classes of customers:

Wire and Cable Wholesalers (or Jobbers)
Radio Jobbers
Contractors
Manufacturers
Steam and Electric Railways
Dominion Government Departments and Crown Companies
Electric Power and Distributing Companies (including Municipal Public Utilities Commissions)
Municipal Government Departments
Provincial Government Departments
Pulp and Paper Companies
Mining and Smelting Companies
Certain Special Customers[1]

The discounts established for the above classes have applied in each case to a limited number of specified products only.

A complete revision of the discount structure was agreed upon and put into effect by the manufacturers in the early part of 1948. Before then the wholesalers' discount had been 6 per cent on almost all items sold to the wholesale trade; under the discount structure established in 1948, wholesalers were allowed a maximum discount of 15 per cent on all products defined as wholesaler items, except weatherproof wires and cables and service entrance cables, on which wholesalers were to receive a 10 per cent discount. Under the revised set-up most of the other classes of customers referred to above were granted a discount of 10 per cent on weatherproof wires and cables and service entrance cables, prior to which they had received no discount on these products. Radio jobbers were granted a 5 per cent discount in 1949, on a limited number of electrical cords, prior to which time they had received no discount.

Agreements among the manufacturers to allow uniform cash discount terms have also been made from time to time. These agreements have set the rate of cash discount, if any, that was to be allowed, the period within which it was payable and the dates on which changes were to be made effective. Since 1940, at least, the manufacturers have been under considerable pressure from jobbers, acting through various associations, with regard to cash discount terms. The manufacturers during that period have by agreement decided whether or not to accede to the jobbers' demands, and have by agreement decided what means were to be used to resist them. The variations in these terms of sale have been as follows:

---

1. Referred to in previous section on classification of customers.

| | |
|---|---|
| Prior to July 1, 1940 | - cash discount of 2% 10 days |
| On and after July 1, 1940 | - cash discount of 1% 10 days from date of invoice, net 30 days |
| On and after February 2, 1948 | - no cash discount, net 30 days |
| On and after May 1, 1950 | - cash discount of 1% 10 days or net 30 days |

Agreements have also been entered into which defined the products on which an agent could be allowed a commission and established the maximum amount of such commission that could be allowed. Until 1948 a wide variety of products was sold through wholesale firms who were tied exclusively to one or other of the manufacturers by agency agreements. Such a system tended to limit the number of wholesale outlets available to any one manufacturer. In early 1948 a new jobber-agent set-up was introduced whereby exclusive agency agreements were cancelled and agency commissions confined to a limited group of products not commonly carried in stock by wholesalers. The result of the new set-up was to increase the importance of the wholesale trade in the sale of standard wire and cable items.

(a) Trade Discounts

The evidence that trade discounts for certain classes of customers have been established by agreement among the manufacturers (except as it has already been covered in the preceding section relating to the classification of customers) is outlined herein.

An internal Canada Wire memorandum prepared by T. A. Gass and dated October 6, 1944, referred to a meeting of the sales managers of Northern, C. G. E., Phillips and Canada Wire at which the question of the post-war sales of rubber covered wire and cable and flexible cords had been discussed. This memorandum illustrates the nature of agency agreements at the time and serves as a background in regard to agreements made in 1948 and described below. Relevant passages were:

> ". . .
>
> You will recall our previous Power Cable situation when the various orders were allocated and we found out that our position under that method was not at all secure and decided to abolish same.
>
> It is the feeling that the present system of exclusive agents who are given as a protection at least 7-1/2% by their principal and the fact that other manufacturers do not attempt to meet this agent's commission, is in reality allocations, and as such would probably be in the same position as when our cable was allocated.
>
> In view of the above, our feeling is that the four companies above mentioned should take a firm stand that we are prepared to set a jobber's price and maintain same, reserving however, the right to sell large utilities, large contractors, and large industries, whose volume of purchases is probably as great or greater than those of any jobber at the same price as we would sell to jobbers.

The jobbing industry could then set their own resale price, and the local houses of the Northern Electric, C. G. E. would work with local jobbers in the establishing of such resale prices, but of course reserving the right to meet any cuts that might be made by independent jobbers.

If this policy were pursued it would open up the whole jobbing field to ourselves as well as other manufacturers, whereas now the principal jobbing outlets are tied up under agency agreements, but we must realize that our company does not stand very well with the jobbing trade, and also, that if we insisted on other jobbing accounts being open to us in the same way our jobber-agents, such as J. S. Mitchell, H.M. Hopper, D. C. Keddy, etc, would be open to other suppliers. . . .

The above mentioned policy has the approval of Colonel Harkness and Mr. C. F. R. Jones of the Northern Electric Company, and I would request serious consideration of it from the standpoint of our Company. Personally, I am prepared to recommend it as a possible solution which might work out to our ultimate advantage.

It is realized that we would probably have a great deal of difficulty with the other companies, such as Federal, Boston, Triangle, etc, in that, their whole sales effort is through jobbers and they have no sales organization, but if the four large companies maintain firmly a policy of this kind the others would more or less have to fall in line provided the prices to the jobbers were set at a sufficiently low level to discourage cutting below same in the form of agents' discounts. . . ."

(Ex. 362, CWC 16-2 to 16-2-3, 2552-4)

When questioned with respect to the above document, Mr. Gass stated that action along the lines indicated in the memorandum proved to be unnecessary because the other companies "fell right into line. They sensed the feeling of the jobbing trade". He also stated that after the war all manufacturers, at about the same time, cancelled their agency agreements on building wire and cable "and opened it up to anyone buying it" (Evidence, pp.1719-20).

An exchange of correspondence in May and June, 1947 indicates that in addition to changing the basis of sale of weatherproof wire from a tonnage to a footage basis, an agreement was made with respect to the discount allowed to jobbers on weatherproof wire. On May 20, 1947, W. R. Greenshields of Triangle sent out the following memorandum:

"Referring to our recent discussion re weatherproof wire to jobbers, we feel that something should be arranged at once so that there will be some uniformity so far as the distribution of this material is concerned.

We feel that the set-up suggested looks to be the fairest to all concerned with the exception that 1000 ft. coils should be included, particularly on sizes #6 and #8, and would appreciate hearing from the different interested parties just as early as possible."

(Ex. 112, 2BIW 17-6, 9249)

On June 3, 1947, K. P. Macpherson of Northern circulated a memorandum to which was attached suggested zone list prices for double braid weatherproof copper wire in 250 foot, 500 foot and 1000 foot coils. The memorandum stated:

> "The attached is suggested set-up for Jobbers (10% discount). Do you concur?"
>
> (Ex. 50, 2BIW5-1-11 and 5-1-12, 9185-6)

With reference to Exhibit 50, T. A. Gass of Canada Wire stated:

"A. It originated from the Northern Electric, Montreal, under the signature of Mr. Macpherson.

Q. Was this a product that your company manufactured?

A. We have always manufactured weatherproof wire.

Q. Do you remember around this date whether there were new jobber discounts or was this a jobber discount only with respect to this item?

A. Weatherproof is used largely by the Utilities and seldom used elsewhere. With the advent of farm electrification the demand arose for weatherproof wire for running from the nearest pole line into the farm buildings. That conductor is usually weatherproof wire. As such, weatherproof wire should be available for purchase by electrical contractors throughout the Dominion of Canada who would be doing these farm installations. The logical channel for them to purchase through would be their electrical wholesaler. On or about this time it was decided to set up a list price per 1000 feet for this product which had formerly only been sold on a basis of price per pound. This list price per 1000 feet included a discount of 10% to the electrical jobber for warehousing and handling this product. Would that fully answer the question, Mr. Hunter?

Q. I think it does. This was something that the industry adopted?

A. That is correct.

Q. Including the 10% figure?

A. That is correct." (Evidence, pp. 1703-4)

On or about February 2, 1948, a major revision of the jobber-agent set-up was put into effect by the industry. Items of wire and cable previously sold through agents were classified as wholesaler items and the agents' commissions or discounts on these items were discontinued. Wholesaler discounts were increased from 6 per cent to 15 per cent on most wholesaler items. Arrangements were also made with respect to other classes of customers and other wire and cable products. Prior to the introduction of the new set-up it was discussed at a meeting or meetings of manufacturers' representatives. On December 4, 1947, K. P. Macpherson of Northern

sent out a memorandum stating that a meeting was to be held at the Royal York Hotel, Toronto, on December 8 (Ex. 84, 2BIW 19-2, 9255). A document entitled "Notes re-Distribution", dated December 8, 1947, was identified as the agenda for the meeting of manufacturers' representatives held on that date. The items on the agenda were as follows:

"1. Policy

2. Jobber Items

Code Wire Type T
Code Wire Type R - 600 volts
Non-Metallic Sheathed Cable
AC Cable
ACL Cable
Flexible Cords
S & SJ (limited to 18 - 10)
Annunciator Wire
Office Wire
Weatherproof Wire (250 and 500 coils)
R.I.L.C. (14-4-600 volts)

3. Discounts (except Weatherproof)

Jobbers to warehouse
direct to customers

Contractors
Manufacturers
Steam Railways
Dominion Government
Chain Stores (Cords)

4. Contractors Definition

5. Cash Discount

6. Agents

Bare
Weatherproof
R.C. & P.V.C.
Power Cables
Magnet
H.D. Jacketted Cables

7. New Code" (Ex. 85, 2BIW 11-5, 9207)

Several witnesses were questioned as follows with respect to Exhibit 85:

<u>V.N. Longtin of C.C. & F.</u>:

"Q. I will show you Exhibit 85, which purports to be dated December 8, 1947. Can you say whether that was the agenda for the meeting or whether you recall those subjects discussed?

A. It is most likely the agenda for that meeting. It carries the same date.

Q. Referring to Item No. 3, Discounts. Do you recall a discussion on discounts covering the various items indicated?

A. Yes, I think that was discussed. We discussed it at other meetings as well.

Q. Also cash discounts?

A. Yes. . . .

Q. Was there a new jobbers' discount on the appointment of jobbers which went into effect shortly after December 1947?

A. That I couldn't say. I don't remember.

Q. Do you remember that there was a new system adopted with respect to wholesalers' discounts? You mentioned yesterday a change in jobber or wholesalers' discounts to 15 per cent.

A. Yes, but I don't remember the date.

Q. And from looking at this agenda, you could not say whether this was part of the discussion which led up to a revision of the jobbers' discount scheme?

A. It might have been discussed but action might not have been taken."

(Evidence, pp. 964-5)

<u>G. W. Arnold of Boston</u>:

"Q. Would you refer to Item No. 2 on the agenda, 'Jobber Items'? Did the manufacturers at meetings decide on the wire and cable products which would be included under the heading of jobber items?

A. Yes.

Q. Am I correct in my understanding that when you included an item as a jobber item that means that it is sold to jobbers at a jobber discount?

A. Yes.

Q. What was the purpose of discussing those products at meetings?

A. A great many items that are used by Industrials and Public Utilities that do not go through jobbers; they are bought directly from manufacturers, and the prevalent method is direct to the manufacturers and the jobber does not enter into the discussion.

Q. Can I ask you one more question on Item No. 2? As a result of the discussion by the manufacturers would there be a decision as to what items would be included as jobber items?

A. I do not think you could call it an agreement.

Q. They were just suggestions as to what?

A. The individual manufacturer would consider a jobber item.

Q. Are you suggesting that as between manufacturers one manufacturer has certain items as jobber items, whereas another one does not?

A. It might be so, but we consider them all jobber items.

Q. When you say there was no agreement---?

A. There was no definite agreement. I did not come out and say these are the only items I will consider jobber items. There was no such statement made.

Q. When it was decided, say, that code wire Type 'R' 600 volts, was going to be included as a jobber item, was that the decision of all the manufacturers present or would one manufacturer say it was and others would not?

A. No, I think they would say they would agree.

Q. What is your understanding of the word 'agreement'?

A. An agreement to me would be that each manufacturer would say these are the items I will consider jobber items and no others, and there was no such statements made at meetings. There was a suggestion that these are the items that will be considered jobber items and the manufacturers would consider adopting them, but there was no definite agreement in that way.

Q. Would you describe it as a tacit agreement or arrangement? I gather there was a discussion and there would be a decision that certain items would be classified as jobber items. Would you call that a tacit agreement or understanding or arrangement or a gentleman's agreement?

A. It might be a gentleman's agreement. I could not even call it a tacit agreement. I would say this, that one manufacturer or possibly two or three manufacturers would say, 'I will adopt these as jobber items', and others just fell in line without further comment.

Q. Would you refer to Item No. 3 under the heading, 'Discounts'? Did the manufacturers at these meetings state the discount which would apply as between, say, these classifications that are indicated on this agenda, jobbers, contractors, manufacturers, steam railways, Dominion Government and chain stores?

A. I think there would be the suggestion as to what each class would get and the manufacturers would probably fall in line.

Q. You say that it would be the same type of understanding as in the case of Item No. 2 dealing with jobber items?

A. That is right." (Evidence, pp. 1332-5)

W. R. Greenshields of Triangle:

"Q. And Exhibit No. 85, to your knowledge would that be an agenda of the meeting of the manufacturers?

A. Yes, I would think so.

Q. Would you refer to Item No. 2: 'Jobber items', and can you explain what would be discussed under that heading or what was discussed under that heading at the meeting?

A. I wouldn't know now.

Q. Can you explain what a jobber item is?

A. It is something that a jobber handles, that is, all building wire for instance is handled by a jobber but he would not handle lead-covered cable and things of that nature. Magnet wire. He would handle all those different items which are listed under jobber items.

Q. Would his discount on those items be the same or would it vary from item to item?

A. It would change somewhat. Here on your footage material I would say they would all be the same. There is also listed here annunciator wire and office wire. I do not think the discount would be the same on those. I am not sure about that. Weatherproof, it would not be the same.

Q. You mentioned earlier this morning that the jobbers' or wholesalers' discount was 15% now?

A. Yes.

Q. Would that be 15% for all products, or from what you have just said for some products there might be more or less than 15%?

A. That 15% on your list would give a man nothing. That is supposed to be the jobber's price on all building wires. 15%, but that has ever since I have been in this business been repeatedly cut. I mean that certain jobbers on certain jobs will put it up and they cannot live with this competition and they want to know what can be done about it. As I say, sometimes that does happen but 15% is the usual jobber's price on building wires. When it comes to annunciator wire and office wire I don't know what it is. I think it is 10% on weatherproof wire.

Q. Is my understanding correct that there are certain products which are manufactured which are not jobber items?

A. Yes.

Q. In that case they would be sold at the list price with whatever discount is decided on?

A. That would be material that a jobber would have no object in selling and the companies would sell direct possibly to power companies or governments or railways.

Q. Was the purpose of discussing jobber items at a meeting of manufacturers to obtain uniformity as between manufacturers of those items which would come within that classification?

A. Yes.

Q. Has it been the practice in the industry that items are added to the jobber items and taken away from time to time, or are they being added?

A. There are always being added."

(Evidence, pp. 1398-1400)

Subsequent documents indicate that the new policy, which was discussed by the manufacturers' representatives at the meeting on December 8, 1947, was put into effect on or about February 2, 1948. Between January 21 and January 30, 1948, Canada Wire, Automatic, Northern and C. G. E. notified their branch offices and district managers of the change and outlined the new policy in detail. In these notifications Canada Wire, Northern and C.G.E. stated that the new policy was to be effective on February 2, 1948. The term "jobber" was declared to be a misnomer and the term "wholesaler" was substituted for it.

Under the new wholesaler policy certain items normally carried in stock by wholesalers were classified as electrical wholesaler items and on these items agency discounts were abolished. They were as follows:

Building Wires - Type R, RH, RW
Non-Metallic Sheathed Cable
Armoured Cable - Types AC and ACL
Flexible Cords - All types except jacketted having conductors larger than #10 B. & S.
Annunciator Wire
Office Wire
Rubber Insulated Lead Covered Cables - Sizes #14 to #4 B. & S. inclusive - 600 Volts only.
Welding Cable
Weatherproof Wire and Cable.
Service Entrance Cable

On these products, except for weatherproof wire, welding cable and service entrance cable, electrical wholesalers on the recognized or approved list were to receive a discount of 15 per cent from list

prices in effect at the time of shipment. Their discount on weatherproof wire and cable and service entrance cable was to be 10 per cent. C.G.E. listed the discount on welding cable as 6 per cent, Canada Wire and Automatic listed it as 15 per cent while Northern did not list welding cable as a wholesaler item. Correspondence referred to later indicates that there was some confusion among the manufacturers with regard to the discount applicable on welding cable, but that the intention apparently had been to have a uniform discount.

The following classes of customers were to receive a 10 per cent discount on weatherproof wire and cable and service entrance cable:

Steam and Electric Railways
Electric Power and Distributing Companies (including Municipal Public Utilities Commissions)
Contractors under contract to Utilities for specific contracts only
Municipal Government Departments
Dominion Government Departments and Crown Companies
Provincial Government Departments
Pulp and Paper Companies
Mining and Smelting Companies

No agent's commission was to be paid to electrical wholesalers on wire and cable products classified as wholesalers' items. The following products were not to be considered wholesaler items, but agents could be appointed to sell them on a scale of maximum commissions set out below:

Bare Copper Wire and Cable - $.75 per c. lbs.
Weatherproof Wire and Cable
(a) On shipment to agents' warehouses - $2.00 per c.lbs.
(b) On shipment direct to agents' customers - $1.00 per c. lbs.
Magnet Wires - 7½%
Power Cables -
(a) Rubber Insulated Lead Covered
(b) Paper Insulated Lead Covered
(c) Varnish Cambric Insulated Lead Covered
(d) Varnish Cambric Braided Cables
- 5%
Rubber Jacketted Cables - 7½%
Phono-Electric Alloys, Brass, Bronze, Copperweld and Copperweld and Copperweld-Copper - $.50 per c.lbs.
Aluminum and A.C.S.R. - $.25 per c. lbs.
Asbestos Insulated Wires and Cables - 5%
Cord Sets - 5%

The following exhibits relate to changes in manufacturers' distribution policies, including the amount of discounts applicable to classes of customers, during 1948:

Ex. 85, 2BIW11-5, 9207
Ex. 342, CEG 17-9-1 to 17-9-5, 3789-93
Ex. 204, WAE 2-1-9 to 2-1-11, 3161-3
Ex. 203 and 182, AEL 5-8 to 5-8-3, 93-5
Ex. 86, CEN 47-15-2, 4113
Ex. 363, CWC 44-1 to 44-1-4, CWC 44-2 and CWC 44-3 to 44-3-2, 2706-12

These documents were mostly intra-company correspondence of various companies. Witnesses shown the exhibits said that they represented the implementation of the policies agreed upon at the meetings of manufacturers' representatives on December 8, 1947. With respect to Exhibit 86, K. P. Macpherson of Northern stated as follows:

"Q. My question was does this represent the implementation of the policy or the agreements that were arrived at, at the meeting of the manufacturers' representatives on December 8, 1947?

A. I think perhaps it does.

Q. Did all the manufacturers implement this same policy to which you have referred in this inter-office memorandum?

A. I assume perhaps they did.

Q. Do you know?

A. I do not know anything to the contrary.

Q. Do you know whether they did?

A. I expect they did.

Q. Well, I notice in the memorandum it indicates that Northern Electric would adopt this policy effective February 2, 1948. That is correct, is it?

A. That is what it says here.

Q. Do you know whether your company did adopt that policy on that date?

A. I think we did. In other words, I don't know whether we did it on the 2nd or the 3rd or when it was, but this was the policy that was adopted."

(Evidence, pp. 229-30)

With respect to Exhibit 182, J. H. Fitzgerald of Phillips stated:

"Q. Could you refer to the memorandum in the first paragraph:

'Further to my telephone conversation with you re-
'garding the proposed change in the jobber agent
'set-up, this matter has now been fully clarified
'and I am setting out below the details of our new
'arrangement.'

Do you know to what Mr. Lindsay refers when he refers to the change in the jobber agent set-up?

A. Yes.

Q. And when he refers to the details of our new arrangement, does that refer only to an arrangement with respect to the jobber agents of Automatic Electric, or does it refer to an arrangement with respect to the jobber agent set-up for all manufacturers?

A. It refers to the industry.

Q. I take it from what appears in the memorandum that Mr. Lindsay is then setting out for the benefit of certain persons in the Automatic Electric just the details of the arrangement?

A. That is correct.

Q. But it was an arrangement which was made for the industry?

A. Yes." (Evidence, pp. 672-3)

T. A. Lindsay of Automatic was examined as follows on Exhibits 182, 203 and 204:

"Q. You refer in this Exhibit No. 203 to the proposed change in the jobber-agent set-up. This is dated January 23, 1948. Do you recall whether this change in the jobber-agent set-up was a change that had been adopted by all the manufacturers?

A. Yes.

Q. It was?

A. Yes.

Q. Was this one of the subjects which were discussed at meetings of the manufacturers?

A. Yes.

Q. And as a result of the discussions which took place was it agreed that this new jobber-agent set-up would be established?

A. Yes.

Q. Was it also agreed that it would go into force as of a certain date?

A. Yes, I believe so.

Q. You were present at the meeting at which this was discussed?

A. Yes.

Q. Would you recall whether the effective date of this new jobber-agent set-up was February 2, 1948?

A. That applies to a cash discount.

Q. What about the rest of the jobber-agent set-up; was there any effective date that you recall?

A. No, I don't recall a definite date."

(Evidence, pp. 741-2)

"Q. I was wondering if I could ask one more question in regard to Exhibit No. 203 regarding the effective date. Would you refer to page 2 at the last paragraph on the page?

A. Yes.

Q. Does that indicate that new prices other than merely a cash discount would come into effect on February 2, 1948?

A. Yes, new price sheets.

Q. And there would be new price sheets in view of the changes in the groups that would be allowed jobber's discount?

A. If I recall correctly, the jobber discount prior to this time was 6%. It was changed to 15% with a re-shuffling of prices in the price sheets.

Q. The effective date of that was February 2, 1948?

A. That is correct." (Evidence, p. 744)

On February 6, 1948, L. A. Rodgers, district manager of C.G.E.'s Winnipeg office, wrote to F. W. Barnhouse of C.G.E. complaining that the notice of the change in wholesaler-agent policy had not arrived on his desk until 2:00 p.m. on February 2, and that they were last in advising their customers of the change. He stated that "Canada Wire mailed from Toronto a letter which arrived on each customer's desk on the morning of February 2nd" and Northern received their data on January 30. He also asked if the 10 per cent discount to jobbers on weatherproof wire should be taken off the zone price before or after the freight increment had been added (Ex. 343, WGE 1-1-3 to 1-1-4, 3072-3). F. W. Barnhouse replied on February 9, 1948 that the information had been mailed on January 30 and continued:

". . . Due to a number of reasons, a few being beyond our control, the information on this change in sales policy was not completely available in this office until Friday afternoon, January 30th. However, we do try to get our pricing information out promptly once all details are available.

In regard to the application of the discount for Weatherproof Wire, we had hoped that the general interpretation would be that the discount would be off the f.o.b. destination price. In our eyes this interpretation would have been a clearer and more convenient method. Therefore, I did not raise this point in any discussion, hoping that the general practise would be to adopt the procedure of taking the discount off the delivered price. However, at a later date, the question was brought up and it has now been decided that the discount should be off the f.o.b. factory price and add the freight last. New Price Sheets are being issued today, clarifying this point. . . ."

(Ex. 343, WGE 1-1, to 1-1-2, 3074-5)

With respect to the above exchange of letters, Mr. Barnhouse was examined in part as follows:

"Q. Having read those two documents and refreshed your memory, Mr. Barnhouse, are you now in a position to say that the change in sales policy which went into effect in February of 1948 was in fact a change which was adopted by all the manufacturers of wire and cable products?

A. I think it was." (Evidence, p. 1606)

At the time the new wholesaler-agent arrangement was set up there was also, apparently, an arrangement among the manufacturers with respect to consigned stocks. On August 5, 1949, L. G. Lumbers of Canada Wire wrote to Geo. Kirlin of Canada Wire's Montreal office as follows:

". . . We sympathize whole-heartedly with Mr. Rooney and agree with him that the system in effect at the present time of not allowing consigned stocks is to the advantage of Northern and C.G.E. Unfortunately, however, at the present time no one has been able to conceive a policy on the wholesaler items that is favourable to everyone. Our company maintains more branch offices by far than any other company except Northern and C.G.E. The matter of consigned stocks is certainly a great aid to such people as C.C. & F., Federal Wire & Cable, etc, and enables them at a very low cost to compete with people like ourselves who maintain their own offices except in such places as St. Johns, Halifax and Ft. William.

When this new policy of selling through wholesalers was put into effect some year and a half ago, it was on the definite understanding that all consigned stocks would be eliminated and that on wholesaler items agents would have no advantage whatsoever over those other wholesalers who were not agents of any particular wire and cable company. The thought behind this was in each of the large centres there are many times the number of wholesalers that there are wire and cable companies; consequently an agent received an advantage over the other wholesaler. Most of the smaller wire and cable companies claim this was not fair and that on wholesaler items they reserved the right to sell anyone regardless of whether they were an agent of any particular company or not, on the same basis. To compromise it was agreed upon that all wholesalers could purchase wholesaler items on an equal basis but that only appointed agents could receive any commission on special items such as Tonnage Materials, Power Cable, Special Trailing Cables, etc.

We understand definitely that all other companies have cleaned up their question of consigned stock long ago with the exception of Federal Wire & Cable, who have just now cleared theirs up, and it is up to us to do the same. . . ."

(Ex. 377, CWC 7-2 to 7-2-2, 2506-7)

Mr. Lumbers was examined as follows with respect to Exhibit 377:

"Q. . . . Can you identify the initialling which appears on the second page?

A. It is my own.

Q. I take it that this was inter-company correspondence?

A. Yes, to our Eastern Manager.

Q. Would you refer to the document and then I would like to ask you a question with relation to the reference in the third paragraph. The third paragraph refers to a new policy of selling through wholesalers to be in effect from a year and a half ago and this document is dated August 5, 1949. Was that when a new wholesalers' sales policy was adopted by your company?

A. That is what I would take this to mean. I think this is just before my time.

Q. Before you came in as General Sales Manager?

A. Yes; we formerly sold at 6% and we gave agents 7½%. We gave everyone who were recognized wholesalers 15%.

Q. At the time you did that, I take it, that was the policy that was adopted about the same time by all the manufacturers?

A. Yes.

Q. Was it also part of that policy that consigned stocks would be eliminated?

A. Yes.

Q. Consigned stocks would be in the hands of agents?

A. Yes. You see, if we had an agent we put whatever we thought he could sell down there. That would not be billed to him until he actually sold it, at which time invoices would go through.

Q. When you refer to the definite understanding that all consigned stocks would be eliminated, was that an understanding as between the manufacturers?

A. That is right." (Evidence, pp. 1789-90)

As mentioned previously, there was apparently some confusion with respect to the discount on welding cable. Canada Wire, which had shown the discount for welding cable under the new set-up as 15 per cent, prepared the following memorandum dated February 12, 1948, which appears to have gone to Messrs. Macpherson, Fitzgerald and Barnhouse:

"Re: M Series Sheet 14.7.1 - Welding Cable

To date we do not appear to have received a revised Sheet 14.7.1 changing the Wholesaler's discount to 15%.

We understand it was the intention to alter this sheet to correspond with the other Wholesaler items, and we would be pleased to receive M's revision as early as possible."

(Ex.382 and 53, CWC17-10-2, 2574)

When questioned with respect to the above document K. P. Macpherson of Northern stated that the "purport of the thing" was that the "M" series referred to was a series of sheets published by Northern (Evidence, p. 149). J. H. Pryce of Canada Wire stated that the document originated with Canada Wire and was further questioned as follows:

"Q. . . . Does that refer to an intention arrived at as a result of discussion between the manufacturers?

A. Yes, I would say so.

Q. Did the Northern Electric Company prepare price information on welding cable in February, 1948?

A. As far as I know, yes.

Q. Did your company manufacture it at that time?

A. Yes." (Evidence, p. 1828)

In Exhibit 86, describing the new set-up of Northern, welding cable is not included among the wholesaler items. It would appear that if their understanding had been that the discount on welding cable was to remain at 6 per cent, as under the old set-up, no new sheet on welding cable would have been necessary. In a letter dated July 23, 1948, to J. H. Pryce of Canada Wire, E. W. Johnson of Canada Wire's Vancouver office stated:

". . . I have been in touch with Automatic Electric regarding discounts on welding cable - they have a list of discounts for welding equipment dealers and manufacturers, also, they advise me that they have been allowing 15% to electrical wholesalers as welding cables were included in their list to receive a maximum discount. We would be glad if you would check up on this and advise us."

(Ex. 375, VCW 14-4, 5160)

On June 14, 1948, F. W. Barnhouse of C.G.E. sent a memorandum to the members of the industry asking them to change Schedule Sheets C.G.E. 182 and 186 to show a discount of 15 per cent to manufacturers buying under a sales tax license. He stated that the schedule sheets would be "re-issued at once showing these changes". These sheets referred to the following items of wire and cable:

Type TF and TFF - 300 Volts
Type T and TW - 600 Volts

(Ex. 54, 2BIW 11-14, 9218)

A memorandum to T. A. Lindsay of Automatic from W. Mulroy of Automatic's Vancouver office dated August 4, 1948, referred as follows to a local agreement:

". . . At a recent meeting in Vancouver the manufacturers agreed that firms on the wholesaler's list should receive a 5% discount on the following types of material:-

Bare Copper Wire
Magnet Wires
Telephone Wires
Asbestos Wires

While our price book has never shown a discount applicable to wholesalers on these items of material, it has been the practice for many years to allow a 5% discount. The sales to Jobbers of these materials has always been negligible, and it was felt that the discount allowed would satisfy the jobbers, and would not affect other arrangements.

When the revised wholesaler's price set-up went into effect in February the question of discounts on these items was discussed and all firms, with one exception, agreed that the discount should be discontinued. The matter was left undecided, at that time, but it was discovered later that the one firm had continued to allow the discount. This firm was reluctant to discontinue the practice so the others agreed to allow same. It was also agreed that the following firms are to receive a 6% discount on rubber covered wires and cords and a 5% discount on Philex and Type 'AC' Cable:

Fleck Bros. - An old established mine and mill supply house.

Black Bros. - An automotive and radio supply house.

Wood Vallance - A hardware house in Nelson, B.C.

Monteith Sales - A firm with several electrical agencies, which has operated in Vancouver for 10 years or more.

Lipsett Ltd. - An old established ship - Chandlery firm. . . ."

(Ex. 210, AEL 15-6, 198)

On August 9, T. A. Lindsay sent Mr. Mulroy's letter to J. H. Fitzgerald of Phillips stating that he thought the matter should be discussed at a meeting of manufacturers' representatives which was to be held on August 19 (Ex. 211, AEL 15-5, 200; Ex. 99, 2BIW 11-11 and 11-12, 9215-6; Evidence, pp. 754-7). On August 25, 1948, Mr. Lindsay wrote to Mr. Mulroy advising him that the 5 per cent discount on Bare Copper Wire, Magnet Wires, Telephone Wires and Asbestos Wires should be withdrawn. With regard to the other items referred to in Mr. Mulroy's letter of August 4, Mr. Lindsay said:

". . . we are in agreement with this action, as it falls within the limits of the policy on discounts covered by a separate letter".

(Ex. 212, VAE 1-1, 4159)

It should be noted that these items were classified as wholesaler items in February 1948, whereas Bare Copper Wire, Magnet Wire, Telephone Wire and Asbestos Wires were not so classified . It would appear that the decision arrived at by the manufacturers' representatives at the meeting on August 19th was to abide by

the new wholesaler set-up and to allow local arrangements to be made only within its limits.

A further example of agreement upon discounts appears from a memorandum of November 1, 1948 from T. A. Lindsay to J. H. Fitzgerald:

> "Referring to G's memo of October 27th, we are in agreement with the suggestion that a discount of only 5% be allowed radio jobbers on their purchases of Types POSJ, POT and PO Cotton Cords for power leads."
>
> (Ex. 213, AEL 15-26, 230)

Mr. Lindsay, examined on Exhibit 213, gave the following evidence:

"Q. Can you say, Mr. Lindsay, that this was a memo that you sent to Mr. Fitzgerald?

A. Yes.

Q. I gather from the context that it was the result of a memo from 'G' that Mr. Fitzgerald had referred to you?

A. Yes.

Q. And 'G' is Mr. Gass of Canada Wire & Cable Company?

A. Yes.

Q. The subject matter was a discount of 5% for radio jobbers for certain types of wire or cable?

A. Yes.

Q. Do you know whether this discount was subsequently adopted in the trade?

A. I believe it was.

Q. By all the manufacturers?

A. Yes." (Evidence, pp. 757-8)

Notes taken by T. J. Bell of Federal and found in Boston's files indicate that a similar discussion took place at the meeting of January 24, 1950. Item 2 of these notes included the following:

> "2. A good deal of discussion centred around the problem of classifying jobbers into A and B jobbers. No action was to be taken until the House had completed its present session. It was felt that under present circumstances it might bbe rather embarrassing to classify some of our jobbers as B jobbers and have to change their discounts."
>
> (Ex. 304, 2BIW 8-3-1 to 8-3-3, 9191-3)

D. C. Borden of Northern prepared notes of the proceedings at a meeting of manufacturers' representatives held on February 20,1952,in which

the following extracts appear:

> "RH-RW to be added to our list of wholesaler items at once, with short length additions (same as Power Cable) to remain. . . .
>
> D.D.P. Sheet to be changed to show '10% on all 15% wholesaler items'. . . .
>
> Consideration is to be given to an improved resale page on Weatherproof Wire."
>
> (Ex. 121, 3NE4-2-2 to 4-2-3, 4324-5)

Questioned about the reference to an improved resale page on weatherproof wire, Mr. Borden stated:

> "A. Of course, the re-sale page means the price book page. The prices are pretty well all the same. Defining who is large enough to get a special 10% discount on weatherproof wire is very loose so this definition could be interpreted to include almost everybody. In all these special discounts, the purpose is to give some preference to large buyers. That is the old law, that the people who buy in big lots deserve a better price, and in order to do so it was necessary to lay down a reference as to who were large buyers. If you look you can find an excuse to include almost everybody within the limits of the wording. Nothing was agreed upon but the wording was out of line.
>
> Q. Did you say that this page was going to be something that was to be prepared and adhered to by all the manufacturers?
>
> A. It would be prepared and issued by one manufacturer and the others would keep it."
>
> (Evidence, pp. 474-5)

The documents indicated that the manufacturers established in 1948 a uniform list of contractors who could be given a discount up to 10 per cent on certain products. There was also a uniform list of Vancouver contractors who could be given a discount up to 5 per cent. The lists were apparently established about the same time as the jobber-agent set-up was changed, and additonal names have been added to it from time to time. Item Number 4 on the agenda of the meeting which was held on December 8, 1947, and at which the new jobber-agent set-up was discussed, was "Contractors Definition" (Ex. 85, 2BIW 11-5, 9207). Certain internal company correspondence of Canada Wire and Northern, referred to hereunder, indicates that these two companies in 1948 were preparing or had prepared the list of contractors. Other documentary and oral evidence confirms that the policies referred to in this internal correspondence had been discussed and agreed upon by the manufacturers.

On January 21, 1948 T. A. Gass of Canada Wire wrote to announce the new distributive set-up to branch and district managers of the company and continued:

> ". . . With the advent of the new sales policy already outlined, we feel that such large contractors must receive

special consideration as the wholesale houses would undoubtedly allow some concessions for the sake of securing the wire order from a contractor with a large contract.

We would, therefore, request that you send in to the writer a list of such contractors in your district whom you believe receive special prices and we will go over same very carefully and will in all probability authorize you to sell such contractors Building Wire for their contracts at a discount not exceeding 10% from the established prices in effect at the time of purchase.

The above practice we feel will place you in a competitive position but we want to make it perfectly clear that this will not be a general authorization and that no discount will be extended to other than those approved by this office; but in the event of some contractor not already approved by this office receiving a contract for a large job it will be quite in order for you to submit full details of such job and the contractor to this office and ask for authority to quote a discount on such job to such contractor.

The above practice we believe will fully comply with the requirements of Section 498-A of the Criminal Code which states that buyers of like kind and quantity must be sold at like prices.

The above suggestion of a maximum discount of 10% should not of necessity be quoted on every job to every contractor for whom same is authorized by head office but would allow you a 10% leeway for negotiationg as we are sure you will keep in the back of your mind the fact that we are in business to make a profit and do not want to unnecessarily give away any share of such profit but only to place you in a competitive position where you have from time to time in the past reported that such contractors were receiving special consideration from competitors. We trust the above is self-explanatory and that we may have your suggestions for names for approval at your earliest convenience."

(Ex. 363, CWC 44-2, 2710)

On September 20, 1948, A. L. Brown of Northern's General Sales Department, in a memorandum to district managers, also reviewed the new policy put into effect in February 1948 and stated that an inherent part of that policy was that competition could be met within the 15 per cent maximum wholesalers' discount. He continued as follows:

". . . Since that time there has been a tightening up of the price situation in the United States, with the result that less wire and cable is being imported, with consequent improvement in the competitive situation.

In view of this, our Wire and Cable Division management has agreed to the tightening up of our policy with respect to discounts from regular resale prices. Under this policy it has been decided that certain Electrical Contractors and <u>only</u> a certain list may be given a discount. This discount

from resale must not exceed ten per cent (10% on 15%)[1] and is to be given to the concerns listed, as follows:[2]

| | District |
|---|---|
| Canadian Comstock & subsidiaries | Maritime, Eastern, Ottawa Central |
| Canadian Kellogg Company | Eastern - Central |
| Bedard & Girard | Maritime, E.C. & Ottawa |
| A. D. Ross | Eastern |
| P. McCuaig | " |
| Standard Electric | E. and C. |
| Canada Electric | Central |
| Ontario Electric Construction | " |
| Mofax Electric | E. and C. |
| Roxboro Electric | Central |
| Howard C. Simpkin Ltd. | Eastern |
| Fairbanks Electric | Eastern |
| Schumacher-McKenzie | Mid-West |
| Hume and Rumble | A.B.C. |
| C.H.E. Williams | A.B.C. |

. . ." (Ex. 57, NE 113-1 to 113-2, 1080-1)

When examined on the contents of Exhibit 57, K. P. Macpherson of Northern said that they were a "fair statement" of the situation as it existed on September 20, 1948, the date of the document (Evidence, p. 154).

In a memorandum dated February 12, 1948, J. H. Fitzgerald of Phillips advised T. A. Lindsay of Automatic of the method to be employed in granting a special discount to A. G. Fairbanks Ltd., a contractor. Mr. Fitzgerald said he had had a discussion with Charles Woolgar of Mr. Macpherson's office and then stated as follows:

> ". . . The main point in connection with the conversation is that for the time being at least, we should continue as we have in the past, that is if you feel that it is desirable that we should take on this customer, and you should try and find out, by trial, the discount level. We presume therefore that you will take the matter up with Mr. Caveney and get his recommendation after which you should clear it through us in the usual way before putting anything into effect.
>
> I also had a call from 'B' in this connection and advised him along the same lines." (Ex. 208, AEL 2-2, 148)

When questioned with respect to this document Mr. Fitzgerald said that "B" referred to in the last paragraph was F. W. Barnhouse of C. G. E. Mr. Fitzgerald was questioned as follows:

> "Q. . . . is there a special contractors' list distinct and separate and apart from the wholesalers' list?

---

1. Underlined portion within brackets had been inserted in pencil on original document.
2. Various pen and pencil check-marks which were opposite names on original document have not been reproduced here.

A. No, he was one of the large contractors who by virtue of their large purchases got a discount.

Q. Is that discount to large contractors given by all the manufacturers to the same contractors?

A. There is a fairly well defined list now, I believe.

Q. As of the date of this particular Exhibit No. 183, the date February 12, 1948, I take it that you were clearing with the Northern Electric and with the Canadian General Electric with regard to the inclusion of this particular firm as a special contractor; is that correct?

A. Yes.

Q. Was that the usual practice in the industry?

A. I believe at that time there was not so good a defined list.

Q. Was it the practice that if you did have somebody that you wanted to see favoured, that you would discuss it with your competitors?

A. Not necessarily.

Q. In this particular case you did?

A. We did,but somebody else had been doing something before that. That is all I can assume from that. The file is not complete."

(Evidence, pp. 674-5)

Reference was previously made, when describing the distribution policy adopted by the manufacturers in February 1948, to an agreement among the manufacturers that contractors under contract to utilities were to receive a discount of 10 per cent on weatherproof wire and cable and service entrance cable for specific contracts only. A memorandum of November 4, 1948, written by Canada Wire and apparently sent to Messrs. Macpherson, Fitzgerald and Barnhouse, indicates that the above policy was being observed and, also, that it was enlarged, by agreement, to include sub-contractors. The memorandum was as follows:

"RE: Weatherproof Wire & Cable Discount

For record purposes we should like to outline a recent case which has come to us concerning the 10% discount on Weatherproof Wires and Cables.

On the present basis of discounts, contractors under contract to any of the recognized preferred customers engaged in erecting transmission and distribution lines for that specific contract may be allowed a 10% discount.

The case in question has to do with Bedard & Girard Limited, who are doing temporary electrical work for the Pentagon Construction Company, who in turn have the original contract from the Ontario Hydro for the Chenaux Power Development on the Ottawa River.

Under these circumstances, we feel that Bedard & Girard are entitled to the 10% Discount since they are doing the electrical works for the original contractor. We believe you will agree with us in this respect and unless we hear from you to the contrary we propose allowing a 10% discount to Bedard & Girard in this particular instance."

(Ex. 214 and 185, AEL 6-18, 235)

Northern replied on November 5, stating:

"With reference to G's memo of November 4th, we concur."

(Ex. 214 and 185, AEL 6-17, 236)

J. H. Fitzgerald of Phillips was examined as follows on the above two memoranda:

"Q. Am I correct in my understanding, Mr. Fitzgerald, that the instance referred to in Exhibit No. 185 has to do with a particular contractor who had been receiving 10% discount, but in which there was some effort being made to obtain a larger discount, or what was the situation there, or was the effort being made to obtain for this contractor 10% discount?

A. That is correct.

Q. Was the 10% a special contractor's discount to which you earlier referred?

A. No, in the case of weatherproof the largest quantity is sold directly to the Power Commission in which the wholesaler or jobber really has no part. On the other hand, there is quite a bit sold for ordinary wiring and in order to allow a contractor to participate in that phase of the business it was necessary to mark the price up and give him a discount, and we gave the same discount to the Public Utilities who buy in large quantities. In fact, the jobber has no profit in selling to them.

Q. This would be an instance where the manufacturers through the exchange of information such as in Exhibit 135 arrived at a particular discount for this contractor, because of the nature of the work he was doing?

A. Because of the customer that he was doing it for. The customer is entitled to the discount, therefore we have to give the contractor a discount.

Q. Before one manufacturer would give that particular contractor a discount he wanted to discuss it with the other people that would be concerned?

A. I think he would go ahead and do it, but he would keep us informed of this special situation.

Q. In the document coded AEL6-18 in the last sentence:

'We believe you will agree with us in this respect 'and unless we hear from you to the contrary we 'propose to allow 10% to Bedard & Girard in this 'particular instance.'

You think that the manufacturer would have already allowed a discount at that time?

A. I would imagine so." (Evidence, pp. 677-8)

On November 9, 1948, J. G. Smith of Federal in a memorandum to the industry referred to a letter from CEDA and stated in part as follows:

". . . Also, in this same letter, they state, 'Rumour has it that a contractor placing an order for wire and cable on a "contract" job is entitled to a special 10% discount. Is this a fact, and does your company operate on this basis?' . . ."

(Ex. 215, PEW 1-9, 2900)

Minutes of a meeting of manufacturers' representatives held at the Caledon Trout Club on June 12 and 13, 1951, contained a revised list of contractors entitled to special discounts in item 2.3 of the minutes, under the general heading "Distribution":

"2.3 <u>Contractors</u>

An up-to-date list was given on 10% contractors as follows:

Bedard and Gerard - Montreal
Canada Electric
Canadian Comstock and subsidiaries -
National Electric - Montreal
Fred A. Wilson - Ottawa
Queen City - Toronto
Canadian Kellog Co.
Fairbanks Electric Limited
D. A. McQuaig
Mofax Ltd.
Ont. Elec. Construction Co. - Toronto
A.D. Ross & Co. - Montreal
Roxborough Electric - Toronto
Schumacker McKenzie - Winnipeg
Standard Electric - Toronto
Metropole Electric - Montreal
MacDonnell - London
Howard Simpkins - Montreal

<u>For consideration as additional names on 10%</u>

Ainsworth
Cassidy
Fluro
Stone & Webster
Moore } Windsor
G. H. Welpkin }

Williams )
C.H.E. McRae )
Hume & Rumble ) Contractors at 5% in Vancouver
Sayers )
C. C. Carter )"

(Ex.321, 2TWC1-1 to 1-1-6, 8508-13)

Exhibit 119 was entitled "Items to [sic] added to next Meetings Agenda". D. C. Borden of Northern said the meeting took place in April 1952. He explained item 8, "Contractors approved list" as follows:

"A. At any rate, there was a discussion this Spring and it would come under that heading. There are lists, I think they are called list prices on contractor material, and the prices we were discussing this morning on standard material published in a price book and similar prices are published in other price books, not necessarily coming out at the same time. Those are supposed to be according to the price lists, the prices at which the trade buys a product and the trade includes the contractors and many others. However, the most competitive part of the whole business where the competition is keenest is getting the business from contractors and the larger contractors buy in the course of a year many, many times more than the small contractors. There may be a large contractor buying a million dollars a year and a smaller contractor maybe $10,000. There is a tremendous spread between the large and the small. This same law of supply and demand is enabling these large contractors to chisel a better price. First they get it from one and everyone else has got to give it to him and it has gradually been established that the larger contractors in Canada get a discount of 10%. That arises because they buy a great deal more. You have at the bottom the smaller contractors who need a great deal more of service. Northern Electric Company has what we sometimes call pet accounts who will get the 10% and some one else has the same discount because they play at the same golf course and immediately a contractor gets 10% from one he goes to the other and says, 'Jim has given me 10% and you will have to give 10%'. The only difficulty is that 50% of this bargaining is going to be close and the contractor goes to Joe and says, 'Jim is giving me 10%', and that is not so, he is lying. So the reason this becomes necessary is that the manufacturers are defending themselves against these tactics of the contractors who deliberately comes to us to get 10% from the Canadian Wire & Cable, and next day they come to Canadian Wire and say they are getting 10% from us, and so we finally give up and get a list with these people who are big enough to get 10% and we stick together.

Q. The manufacturers will stick together on the one list?

A. Yes.

Q. It will be the contractors who are entitled to 10% less?

A. Yes; that does not work nearly as well as I told you. People are always jumping on and off and there is a lot of competition.

Q. I believe you said earlier this was the most competitive part of the business?

A. Very definitely.

Q. And therefore, this is an action that the manufacturers found necessary in order to protect themselves from this competition?

A. To protect ourselves against buyers who tell us incorrect stories about the competition. The buyer says definitely that Canada Wire is giving him a 10% and we find it is not so. It is a clearing house to eliminate some of the volume of stories that customers use to try to bring prices down to an uneconomical level."

(Evidence, pp. 467-9)

(b) Cash Discount

The evidence supporting the allegation that cash discounts have been established by agreement among the manufacturers is outlined herein.

A memorandum sent out by K. P. Macpherson of Northern on February 5, 1935, indicates that uniform cash discount terms were in effect at that date:

"In future price sheets will show cash discount terms. In the meantime an index showing terms will be sent."

(Ex. 9, 2BIW22-71, 10865)

On February 15, 1935, Mr. Macpherson sent a memorandum to P. A. Timmons, with copies to Messrs. Gass, Leary, Smith and Arnold with reference to the application of the cash discount to particular products:

"With reference to your letter of January 25th, the 2% cash discount applies to Price Sheet of April 1, 1933, on Car Wire.

In reply to the second paragraph of your letter, Loom is covered by another group and I assume there is no change to be made in the 2% ten days. . . ."

(Ex. 10, 2BIW 22-53, 10843)

In 1940 an agreement was made by the electrical wire and cable manufacturers, in conjunction with manufacturers of other electrical products, to put into effect on July 1, 1940, a cash discount of one per cent ten days from date of invoice, or net thirty days, applicable to all customers. A committee, composed of representatives of six manufacturing groups (including the wire and cable group), was established for the purpose of considering the change in cash discount terms. On June 14, 1940, this committee which consisted of T. A. Gass of Canada Wire, J. A. Dawes of Crouse-Hinds Company of Canada, Ltd., F. C. Eley of Amalgamated Electric Co. Ltd., and W. E. Weaver of C.G.E. sent out the following letter:

"Quite recently you were contacted in the matter of uniform cash discounts pertaining to the construction material

product lines of the Electrical Industry.

The cash discount under consideration was 1% ten days from date of invoice, or net thirty days, and to apply to all classes of purchasers.

You, along with the other Companies tabulated on Appendix 'A', have approved this cash discount for use with the product lines enumerated on Appendix 'B'.

This cash discount will go into effect on Monday, July 1st, 1940, with the possible exception that in the event that the Dominion Budget is brought down before that date with any changes that would affect prices in general, necessitating reprinting of present price sheets, this 1% cash discount will then become effective at that time.

This discount will in all probability differ from that shown on your present invoice. It is therefore urged that this new cash discount be clearly marked on the form and that your forms be reprinted at the earliest opportunity.

As you will probably wish to notify your customers of this change, we are attaching a suggested letter that you may like to use, as written, or in a modified form."

(Ex. 364, 2FED4-13-6, 14210)

Appendix "A" included a "List of Manufacturing Companies Agreeing to 1% Cash Discount or Already Using It", and this contained the names of the nine wire and cable manufacturing companies (Ex. 364, 2FED4-13-7 to 4-13-9, 14212-4).

The proposed new cash discount apparently aroused some reaction from the jobbing trade. On July 12, 1940, the committee referred to above met again and on the same date T. A. Gass of Canada Wire sent the following memorandum to the wire and cable companies:

"The Manufacturers Committee on Cash Discounts met today and having heard from the six manufacturing groups whom they represented, as well as various individual manufacturers who were not represented, the unanimous opinion of the Committee which seemed to be the opinion of all the manufacturers, was to the effect that the decision previously arrived at to the effect that as from July 1st, 1940, the Electrical Supply Manufacturers would quote Cash Terms of 1% 10 days, net 30 Days, was reaffirmed.

A letter was written by the Committee to the Secretary of the Distributors Committee, advising them of this decision, a copy of which letter will be sent to each manufacturer who has agreed to these terms at the same time as it will reach the Secretary of the Distributors Committee.

The above, we believe, closes the matter as far as the terms are concerned, and after the individual companies have received the official letter from the Committee, it will be in order for them to reply to any communications they may have had from various jobbers in connection with Cash Discounts.

In the writer's opinion it would be advisable, if Mac would immediately issue a sheet, giving the new trade discounts, so that the various companies replying to jobbers in connection with Cash Discount terms could, at the same time, make mention of the revised trade discount.

Naturally, the writer said nothing of the suggested revised cash discount to any member of our organization, or to anyone else, except in the Committee Meeting to-day."

(Ex.364, 2FED4-13-5, 14208
Ex. 348, 2BIW 27-123, 10025)

On July 15, 1940 the committee sent the following letter to the electrical manufacturers including wire and cable manufacturers:

"On June 14th we told you that the new cash discount of 1% ten days, which you along with about 50 other manufacturers had agreed to, would become effective on July 1st.

A few days before July 1st, certain jobbers questioned this change, and since July 1st you have unquestionably received letters of objection from most of the jobbers in the Toronto area and a few from the Montreal area.

A sub-committee of the Toronto jobbers requested to meet, and met, with the members of your cash discount committee. Your committee carried back the Toronto jobbers' comments to the various groups who had appointed them, and your committee has written the jobbers as per the attached.

We felt that you should be advised as to the Industry's decision."

(Ex. 364,2FED4-13-4, 14206)

A copy of the letter to K. H. Kerns, secretary of the Distributors' Committee, was placed in evidence (Ex. 364, 2FED4-13-3, 14204). T. A. Gass was examined as follows with respect to the cash discount change in 1940:

"Q. Was the subject of cash discounts discussed at any meetings of the manufacturers at which you were present, that is, the wire and cable manufacturers in 1940?

A. I would assume that it had been; if not at meetings it was discussed by correspondence or telephone.

Q. Do you recall whether or not the cash discount was adopted as indicated here by the industry?

A. It was. I may say further that there was a general attempt among a large number of manufacturing groups to obtain a standardized cash discount outside of the wire and cable manufacturers, such lines as steel pins and other industries. It is not at all unusual for the Government to receive invoices marked, 'Terms net 30 days, 1% discount for 15 or 20 days', and six months later to get a cheque less 1% cash discount

or 2% cash discount as the case may be. Cash discount is one thing that has been terribly abused."

(Evidence, pp. 1725-6)

In February 1948 the manufacturers adopted a new cash discount policy. Cash discount was one of the subjects which had been discussed at the meeting of December 8, 1947, previously referred to (Ex. 85; Evidence, p. 964). Apparently it was decided to eliminate the cash discount and to invoice on the basis net 30 days. The terms of payment were to be applicable to all classes of customers on all wire and cable products except automotive cables, on which the cash discount of two per cent was to remain. On January 21, 23, 26 and 30, 1948, Canada Wire, Automatic, Northern and C. G. E., respectively, sent out notices of the proposed changes to their branch offices and district managers, each stating that they were to be effective on February 2, 1948 (Ex. 363, CWC44-1 to 44-1-4, 2706-9; Ex. 203, AEL 5-8 to 5-8-3, 93-95; Ex. 86, CEN 47-15-2, 4113; Ex. 342, CEG 17-9-1 to 17-9-5, 3789-93).

The new policy of having no cash discount was not favourably received by the Canadian Electrical Distributor's Association (CEDA). On March 22 and May 14, 1948, Richard Edmunds, general manager of CEDA, wrote to W. R. Greenshields of Triangle urging him to reinstate either a one or two per cent cash discount (Ex. 309, TWC11-16, 589; Ex.310, TWC11-18 to 11-18-2, 591-2). Apparently T. A. Lindsay of Automatic also received letters from CEDA and, on May 18, 1948, sent the following memorandum to J. H. Fitzgerald of Phillips:

"With reference to our telephone conversation today, I am attaching hereto copies of recent letters from Ceda Incorporated.

In connection with the letter on cash discounts, I spoke to Mr. Barnhouse regarding this matter on the telephone and he informed me that he was taking it up with Mr. G. A. Harris. He promised to let me know in a few days' time what their present thinking is on this matter."

(Ex. 219, AEL 15-10, 177)

C.G.E. appear to have received a letter from CEDA on May 14, 1948, and on May 27 F. W. Barnhouse replied, asking that CEDA go along with them on their policy of no cash discount (Ex. 89, NE39, 977). Mr. Barnhouse sent copies of the letter to the other wire and cable manufacturers. After having identified Mr. Barnhouse's signature on Exhibit 89, K. P. Macpherson of Northern was examined as follows on the practice in the industry with regard to changes in cash discount terms:

"Q. Would it be correct to say that the policy on cash discount was discussed at the meetings of the various manufacturers' representatives; is that one of the subjects which was discussed?

A. It may have been discussed once or twice. It was not a general subject of discussion.

Q. When changes in the cash discount to which you have referred previously were made or were being considered, would they be considered at the manufacturers' meeting?

A. Yes, they would.

Q. And as a result of the decision which would be made at those meetings, then the discount would be changed; is that correct?

A. It is correct, but I have never believed they were."

(Evidence, p. 238)

In a letter dated June 3, 1948, Richard Edmunds, general manager of CEDA, invited W. R. Greenshields to be present at a meeting at the Albany Club, Toronto, on June 22, 1948, in order to discuss the whole cash discount question (Ex. 311, TWC11-11 to 11-11A, 582-3). This apparently followed a meeting of manufacturers, called for June 9 to discuss the policy on cash discounts. T. A. Lindsay of Automatic outlined the proceedings as follows in a memorandum to T. W. Brackinreid of Phillips on June 10, 1948:

"As advised you by telephone, an informal meeting was called for 10.00 a.m. Wednesday, June 9th, at the Royal York Hotel to discuss the policy on cash discounts.

The following were present: Messrs. V.N. Longtin, W. Northey, A. Wagman, W. Wagman, W. Greenshields, L. Lumbers, T. A. Gass, C.S. Leary and T. A. Lindsay.

The statement was made that the meeting was purely an informal one to discuss what policy should be followed in dealing with the organized resistance on the part of certain jobbers in accepting our terms of net 30 days. Messrs. Greenshields, Longtin and Wagman stated that so far as their companies were concerned they were dealing mainly with the Electrical Wholesalers and, therefore, the action of certain jobbers in deducting 1% from their payments was causing these companies no little embarrassment. I pointed out that our policy for the past few months had been to return cheques where 1% cash discount had been deducted and that we felt this action was the only means of effectively combatting the practice.

It appears from the statements of the various companies present at this meeting that there are three jobbers involved in Toronto, namely, Zenith, Regent and Masco. In Montreal Mr. Longtin stated that Union Electric were deducting 1% cash discount, but this was not the experience of any other present.

Both Mr. Lumbers and Mr. Leary stated that so far as their respective companies were concerned their Treasury Departments were very much in favour of retaining terms of net 30 days and both felt that there was very little chance that either of their companies would consider the idea of returning to a cash discount arrangement.

Following further discussion all present signified their intention of maintaining the present terms and indicated that

they would follow our action in returning cheques where the 1% cash discount had been deducted. It was also decided that the various companies involved would approach each of the jobbers following the aforementioned practice and endeavour to get them to fall in line. It was also agreed that if the jobber continued to deduct cash discount he would receive no further supplies after his credit limit had been reached. According to Mr. Lumbers, Community Electric Supply in Toronto have blamed Canada Wire for their part in eliminating the cash discount and have cancelled all orders on them.

In concluding the discussion it was felt by all present that if manufacturers adhered strictly to their terms of sale, it would only be a matter of time until the recalcitrant jobbers would accept standard terms of sale. In this connection it was felt by many present that the present situation has been stirred up largely by Mr. R. Edmunds of CEDA on the grounds that he is attempting to justify his position. In this regard most of the companies signified their intention of attending the CEDA meeting at the Albany Club on Tuesday, June 22nd. As agreed with you on the telephone, I will arrange to attend this meeting and, if called upon, will state that it is our intention to abide strictly by the terms of payment now in force."

(Ex. 190, PEW13-2 to 13-2-2, 3008-9)

When examined with respect to Exhibit 190, L. G. Lumbers of Canada Wire said that, to the best of his knowledge and recollection, the document set out the matters discussed and decided upon at the meeting (Evidence, p. 1791). J. H. Fitzgerald of Phillips stated that the meeting was called by those manufacturers most interested in the jobber business (such as Industrial, Triangle and C.C. & F.) and that the manufacturers did not change their policy regarding cash discount until some time after the meeting (Evidence, pp. 686-7). T. A. Gass of Canada Wire indicated that the meeting was called in order to resist the pressure put on the manufacturers by CEDA (Evidence, pp. 1729-30).

Notes taken by T. J. Bell of Federal at a meeting held on January 24, 1950, indicated that a change in cash discount terms was discussed at the meeting. The nature of the discussion was recorded in item 10 of the notes as follows:

"10. <u>Cash Discount</u>

C.G.E. presented an ultimatum saying that the 1st of March, 1950, they intend to adopt the terms 1% 10 days cash discount. It was felt that this was a case of the tail wagging the dog and there were so many implications in the matter that it was thought unwise to change these terms under existing conditions. The discussion on this lasted some time and there was no decision since the consensus of the meeting seemed to be opposed to the change. It would be chaotic, however, to have the matter undecided between us."

(Ex. 304, 2BIW 8-3-1 to 8-3-3, 9191-3)

Cash discounts were again discussed at a meeting held in April 1950 and a decision was reached to adopt a cash discount of one per cent ten days. In a letter to J. E. McAuliffe, President of Triangle, on April 10, 1950, W. R. Greenshields of Triangle made the following statement:

> ". . . During the meeting last week . . . it was decided that all companies as of May 1st would go back to 1% 10 day cash discount and we intend to increase armoured cable . . . to take care of the cash discount. . . ."
>
> (Ex. 313, TWC6-6 to 6-6-2, 543-4)

When examined with respect to Exhibit 313, W. R. Greenshields explained it as follows:

"Q. Would you refer to the second page of the first paragraph at the top of the page where you refer to a meeting held last week? Was that a meeting of manufacturers?

A. It undoubtedly was, yes.

Q. Reference is being made here to some of the matters which were discussed and decisions made at the meetings; is that correct?

A. That is correct.

Q. I take it that this meeting to which you have referred at which the decision was made that all companies as of May 1st would come back to 1% 10 day cash discount?

A. That is correct.

Q. That would be May 1st of 1950?

A. Yes.

Q. This was a decision that in so far as the manufacturers of wire and cable products were concerned that they would go to the 1% 10 day discount on May 1st?

A. That is right." (Evidence, pp. 1410-1)

Mr. Greenshields' statement that an agreement had been made to adopt a cash discount of one per cent ten days on May 1, 1950, is substantiated by certain other documents. On April 18, 1950, Canada Wire sent out a notice to "All Electrical Price Book Holders" stating that effective May 1, 1950, the following new terms of payment would prevail:

> "Shipments made on and after May 1st, 1950, will be invoiced at Terms of 1% 10 Days, Net 30 Days.
>
> This applies to all types of electrical conductors or material generally considered as electrical material, or other items shown in our electrical price book, except Comet Automotive products on which the existing terms to Jobbers

of 2% 10th Prox. Net 30 Days will still apply. . . ."

(Ex. 378, EWC2-47, 4632)

Automatic sent out a similar but undated notice (Ex. 220, CEN16-30, 3913). On April 27, C.G.E. and C. C. & F. sent out notices to the same effect, but containing, in addition, a statement that on billings dated from the 1st to the 15th of the month payment was to be made by the 25th of the month and on billings dated in the remainder of the month payment was to be made by the 10th of the following month (Ex. 344, EGE2-5, 4590; Ex. 270, CGE-43, 729). On July 17, 1950 Canada Wire issued a further notice advising that its terms of payment would be the same (Ex. 387, VCW1-1, 5212).

When questioned with respect to Exhibit 378, L. G. Lumbers of Canada Wire stated that the new cash discount policy had been discussed and agreed upon at a meeting of manufacturers prior to that date:

"Q. At this time, that is, referred to in this document, May 1st, 1950, was there a new cash discount policy instituted?

A. Yes, if that is the date it says, there was a new cash discount policy instituted.

Q. Was that adopted throughout the industry?

A. To the best of my knowledge.

Q. Had it been discussed at a meeting of manufacturers prior to that time?

A. To the best of my knowledge, it had.

Q. Was it as a result of the discussion and the agreement arrived at that this change was made?

A. Yes." (Evidence, p. 1792)

7. Freight Charges

In order to ensure that price competition would not develop in relation to freight charges and thus defeat the basic price agreements, the manufacturers have entered into subsidiary agreements for the purpose of establishing common and uniform systems of delivered prices. This section describes the methods of dealing with freight charges, after which the evidence relating to the agreements in question is outlined.[1]

For certain classes of products, such as building wires and cables and flexible cords and fixtures wires, a zone pricing system has been in effect. Under this system the Canadian market area was divided into seven geographical zones. The boundaries of the seven zones were defined and maps showing the location of zone boundaries were prepared. List prices have been established from

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1. In addition to the evidence of agreement cited herein, the price books of the manufacturers have been drawn upon for the broad description of the system, which precedes the citation of evidence.

time to time for each zone, such prices including all or part of the cost to the manufacturer of prepaying freight to customers at points other than the point of manufacture. For zones 1, 2 and 3 (the eastern provinces) list prices for each zone have been uniform delivered prices applicable to all customers within the zone at destinations served by a common carrier. For zones 4,5,6 and 7 (the western provinces and Newfoundland), prices have been uniform delivered prices applicable only to specified distributing points within the zone. The distributing points for zone 4 are St. John's (Newfoundland) and Winnipeg; for zone 5, Regina and Saskatoon; for zone 6, Calgary, Lethbridge and Edmonton; and for zone 7, Vancouver and Victoria. On shipments to customers at other points, actual freight from the distributing point closest to the destination has been added to the zone list price to arrive at a delivered price.

The remaining classes of wire and cable, such as weatherproof wire and cable, bare copper wire and cable, magnet wire, annunciator wire, power cables and pre-assembled aerial cable, have been sold on the basis of uniform delivered list prices at specified "free" distributing points, usually three or more of the seven locations of the manufacturing plants. Shipments to points other than the "free" distributing points have usually been invoiced at list prices plus arbitrary shipping charges computed by using what was known as a map freight rate and the shipping weight of the wire and cable. In certain specified cases however, actual freight rates have been used by agreement among the manufacturers.

The preparation and circulation of most of the information concerning freight charges has been carried out by Northern. Map freight rates were set up by taking several destination points within a defined area and working out a common freight rate for all such points. Zone maps were established to show the areas (commonly referred to as "map rate sections") within which a common rate applied. Zone boundaries were defined and, for Ontario and Quebec, lists of the principal towns and cities and the map sections within which they fall were compiled. Shipping weights of the various wires and cables apparently have been prepared and circulated by the manufacturers responsible for preparing prices on the several products and have been included on the price sheets with the list prices. The shipping weights do not always represent the actual weight of the cable shipped.

The evidence indicates that agreements were in effect on freight charges as early as 1933. K. P. Macpherson of Northern sent out a memorandum on May 12, 1933 to which was attached the following information:

> "General
> The use of Map Rates on Cab Tire Cables is now discontinued and substituted by shipping zones. Each zone containing one or more Distributing Points. There are six zones as listed below and prices in each zone for f.o.b. the Distributing Points shown therein. Customer to pay freight to destination from Distributing Point.

| Zone #1 | Zone #2 | Zone #3 | Zone #4 | Zone #5 | Zone #6 |
|---|---|---|---|---|---|
| Montreal, Toronto, Hamilton, Brockville, Peterboro, Oshawa, Guelph, Kitchener, Chatham, London, Windsor, North Bay, Sudbury, Ottawa, Sherbrooke, Quebec, Three Rivers, St. Johns, P.Q. | Sault Ste. Marie, New Liskeard, Halifax, St. John, N.B., | Fort William, and Port Arthur | Winnipeg | Regina, Saskatoon, Vancouver, and Victoria | Calgary and Edmonton |

. . .

Shipment
Freight charges from Distributing Point to Destination are arrived at by equalizing freight on Distributing Point nearest to customer's destination, equalization being on the basis of actual L.C.L. freight rates.

Example
What is the selling price at Hamilton, Ont. of 1000 ft. #18 2 conductor Type 'S' Heavy Cab Tire Cable f.o.b. Woodstock, Ont. The nearest Distributing Point to Woodstock is London and the L.C.L. freight rate between these two points is $0.29 per 100 pounds. The weight per 1000 feet of #18 2 conductor type 'S' Heavy Cab Tire Cable is 90 pounds, therefore 90 x 0.29 = $0.26 per 1000 feet. Price per 1000 feet f.o.b. Hamilton (Zone #1) is say $39.50 therefore $39.50 ± $.26 = 39.76 which is the price per 1000 feet f.o.b. Woodstock. . . ."

(Ex. 7, 2BIW21-210-1 to 21-210-5, 12116-20)

On January 27, 1936, K.P. Macpherson sent out a memorandum in which he gave the following outline of the procedure to be followed in determining freight charges on goods shipped from Montreal to various points in New Brunswick:

"From Montreal to various points in New Brunswick, such as,

| | | |
|---|---|---|
| Edmundston | Campbellton | Bathurst |
| Dalhousie | Newcastle | Chatham |
| Moncton | Saint John | Saint Stephen |
| Fredericton | Woodstock, | |

the same freight rate applies and, in the case of LCL Shipments on Rubber Covered Wire, etc., is 88¢ per hundred pounds.

This means that Collect Shipments of Rubber Covered Wire, Flexible Cords, etc., shipped from Montreal and invoiced at Montreal Zone #1 prices will cost the purchaser (particularly in the northern part of the Province) less than Collect Shipments from Saint John warehouse invoiced at Saint John

Zone #2 prices; therefore, in quoting 'f.o.b. Destination' prices or in invoicing Prepaid Shipments on such material, prices may be determined in either of the following ways, the one giving the lower destination price to be used.

(a) Zone #1 f.o.b. Montreal price plus freight to destination.

(b) Zone #2 f.o.b. Saint John price plus freight to destination.

The freight in both instances should be calculated by using the weight of the material published in the price book times (x) the actual freight rate."

(Ex. 10, 2 BIW 22-154, 10959)

In a postscript Mr. Macpherson stated that on collect shipments from the Saint John warehouse freight could be equalized on Montreal.

That zone maps were created by agreement to determine the map freight rate applicable to particular orders and for use with zone list prices (the maps differing for each purpose) is evidenced by a memorandum dated December 30, 1936, also written by K. P. Macpherson. This exhibit referred to an enclosed map showing proposed zones in Ontario, Quebec and the Maritime Provinces, and suggested that a meeting be held in Toronto on January 7, 1937, in order "to complete our discussion of this method of zoning" (Ex. 15, 2BIW 22-362, 11196). On December 31, 1936, T. A. Gass of Canada Wire (Ex. 300, 2 BIW 22-358, 11192) and C. S. Leary of C.G.E. (Ex. 300, 2 BIW 22-360, 11194) acknowledged receipt of K.P. Macpherson's memorandum and the enclosed map and agreed to the proposed date for the meeting. T. A. Gass stated that, "At this time we shall complete our discussion of this method of zoning and other items of interest."

An exchange of memoranda in 1937 indicates the manner in which zone distributing points, for use with zone list prices, were arrived at. On November 20, 1937, J. Godfrey Smith of Federal sent out a memorandum in which he pointed out that distributing points in Zone 1A were the same for all lines of wire and cable sold on a zone price basis with the exception of ABC and ACL cables (Ex. 300, 2 BIW 22-538, 11395). On November 22, 1937, C. S. Leary of C.G.E. replied as follows:

"Referring to memo dated November, it is our feeling that it would be much better to have the same free-delivery points shown for each zone covering all products sold on that basis.

We believe this is what S has in mind, and we concur with him."

(Ex. 300, 2 BIW 22-534, 11391)

P. A. Timmons of Automatic acknowledged both memoranda on November 25, agreeing "that it would be much better to have the same delivery points shown for each zone covering all wire and cable sold on that basis" (Ex. 300, 2 BIW 22-529, 11386). On December 1, 1937, K.P. Macpherson of Northern replied as follows to the three memoranda:

"Replying to S's memo of November 20th and L's acknowledgment of November 22nd, and T's acknowledgment of November 25th. When Zone Distributing points were originally established they represented the locations of jobbers' warehouses. They were divided firstly into groups serving the same competitive areas, and secondly, two or more groups having similar freight rates from manufacturing points were, for convenience, put into a zone. In that way New Liskeard and Kirkland Lake were grouped with St. John and Halifax, and Sault Ste. Marie in Zone 2.

No special consideration of the import situation was necessary at that time. Since then the ABC group in the States set up a zone system and established a low price zone on the Eastern Seaboard and followed this with a number of price reductions making it necessary to put St. John and Halifax in a lower price zone, and they were moved from Zone 2 to Zone 1-A.

Just a few days ago the States manufacturers of non-metallic sheathed cables adopted a similar plan and the same action will be necessary in the case of non-metallic sheathed cable. This change has not become necessary on rubber covered wires because those U.S. Manufacturers are still working on a single price anywhere in the United States. We consider it desirable to leave the zones on rubber covered wire alone for the time being until the present price controversy in the U.S. is cleaned up."

(Ex. 300, 2BIW 22-515, 11372)

Also on December 1, 1937 Mr. Macpherson circulated to the other manufacturers "proposed revised prices and re-arrangement of zones on non-metallic sheathed cable". He stated that this was necessary because of "drastic price reductions in the United States and the adoption of a zoning system for this product". Mr. Macpherson listed the seven zones, the free distributing points within each zone and the prices applicable to the seven zones (Ex. 15, 2BIW 22-514-1 to 22-514-3, 11369-71).

T. A. Lindsay, then of Canadian Telephones and Supplies Limited, Winnipeg, on June 16, 1938, forwarded to P. A. Timmons of Automatic a copy of a letter dated June 15, 1938, which he had received from A. M. Smith of C.G.E., Winnipeg. In his letter, A. M. Smith stated that a meeting of manufacturers of armoured wires and cables had been held on June 14, attended by T. A. Gass and W.G. Vogan of Canada Wire, T. A. Lindsay of Canadian Telephones & Supplies Ltd., E. Lough of Northern and W. J. Taylor and A. M. Smith of C.G.E. Mr. Smith's letter included the following:

"<u>Zone prices</u> - <u>Geraldton, Ontario</u>

To bring all resales into alignment it was agreed that Geraldton, Ontario, would be recognized as a zone three f.o.b. point for non-metallic cable, A.B.C. and A.C.L. Armoured Wires and Cable.

All other wire and cable products will be governed by Manufacturers' ruling which reads:

<u>Tonnage Material</u> (Bare Copper, Weatherproof, Annunciator and Magnet Wire)

Use f.o.b. Toronto price and add map rate freight addition for map section N.
Material now sold on a zone basis - Use f.o.b. Toronto price, plus actual freight rate to Geraldton.
By way of explanation, this ruling simply means that the f.o.b. Fort William and Port Arthur zone prices on rubber covered wires and cables do not apply in the Geraldton district and actual freight from the zone to destination must be added.

QUOTATIONS

For the benefit of all concerned it was decided to incorporate in these Minutes the agreement that provides that zone prices will be quoted and used on all quotations involving zone products and factory prices should not be mentioned unless specially asked for.

Saskatchewan

It was unanimously agreed that an effort should be made to create a resale for the Province of Saskatchewan which would eliminate the present practice of pre-payment of transportation on all wire and cable shipments to points other than Regina and Saskatoon.

Messrs. Lough, Vogan and Taylor will take this under advisement and discuss it further with all interested parties."

(Ex. 236, 3PEW 12-20 to 12-20-4, 9137-40)

On July 27, 1938 P. A. Timmons of Automatic wrote to T. W. Brackinreid of Phillips stating that he was enclosing a map "showing new proposed zones and the only change in the map is that Hull and Gatineau Power points adjacent thereto should be included in the blue zone, otherwise we would have Ottawa jobbers delivering to these points without freight added", and that he required seven such maps for the various manufacturers. He felt that "this system will be adopted at our next meeting to be held some time in September" (Ex. 237, 3PEW 12-18 to 12-18-2, 9134-5).

A memorandum was sent out by C. S. Leary of C.G.E. on November 18, 1938, attached to which were price sheets for heater cord sets, which stated in part:

"Acknowledging G's memo of the 11th, our Mr. M. Graham, comments as follows:

The net dealer price, sales tax included, applies all over Canada.

The net jobber or manufacturer price is established f.o.b. Sault Ste. Marie and east, also west of Sault Ste. Marie. These prices are delivered to a jobber's warehouse or to a manufacturer's warehouse. . . .

Attached is a revised price list giving the established prices for the two zones.

After you have had an opportunity of reviewing this, will all parties receiving a copy of this memo advise by November 24th, if they are agreeable to adopting this resale effective November 28th."

(Ex. 324, 2BIW 26-178-1 to 26-178-2, 10731-2)

A further memorandum was sent out by Mr. Leary on December 7, 1938, as follows:

"Mr. Graham informs me that at an industry meeting yesterday, it was decided to adopt the prices attached to my memo of November 18th and make them effective December 8th.

In view of the replies received, I take it for granted that these prices are acceptable to the parties receiving a copy of this letter, and that you will quote similar prices when called upon to do so."

(Ex.324, 2BIW 26-207, 10761)

On October 29, 1948, J. H. Fitzgerald of Phillips sent out a memorandum, directed to Canada Wire, Northern and C.G.E., with respect to a quotation to the International Nickel Company, as follows:

"On September 21st we quoted, through our agent, for the above on a quantity of 78,000 ft. each of #1 and #2/0 hard drawn bare copper cable, at the regular prices including map rate freight to Sudbury.

We have been recently advised that this business was placed on the basis of the f.o.b. Toronto prices with freight either pre-paid and charged or collect.

Taking into consideration the gross weight of material shipped on reels, the saving to the customer would be not more than ten to fifteen dollars on a total value of around $18,000.00, nevertheless it was apparently sufficient to obtain the order.

If this is the way we are going to quote on these inquiries, we would certainly like to know about it, but we can see no value in Mac's suggestion on advancing the shipping weight to calculate map rate freights for material shipped on reels, if we are going to quote on this basis.

We do not know who received the order but presume it was one of the parties to whom this memo is addressed and we would appreciate receiving your comments."

(Ex. 230, AEL 6-19, 227)

In an internal Northern Electric memorandum, dated November 29, 1949, from S. H. R. Clish to C. E. Woolgar and K.P. Macpherson, Mr. Clish made the following statement:

"It was agreed sometime ago by all concerned that Tonnage Material would be shown on Price Cards as F.O.B. Montreal, Toronto, Hamilton, Brockville, St. Johns, Quebec, Guelph and Peterboro, and that the Map Freight Rate would be shown separately so that if the 10% were allowed to an electrical wholesaler there would be no possibility of this 10% being deducted from the freight component, . . ."

(Ex. 66, NE7, 935)

Mr. Macpherson was examined with respect to this document and stated that as far as he knew, Mr. Clish was referring to an industry agreement (Evidence, pp. 177-8). The f.o.b. points listed by Mr. Clish are the points at which the various wire and cable manufacturing plants are located.

With respect to products to which zone list prices applied the distributing points in Zone 7 have been Vancouver and Victoria. Apparently, Canada Wire's Vancouver office had been absorbing freight charges on shipments to certain interior points for one customer and a memorandum was written to the Vancouver office on July 5, 1950 by J. H. Pryce as follows:

"ZONE 7 DISTRIBUTING POINTS

We have noted the remarks in your letter of July 3rd in connection with the above subject but it must be realized that in absorbing the freight to interior points on shipments to E. B. Horsman you are giving them an advantage over other wholesalers in your territory. Although they are our agents in Victoria, this does not entitle them to any special concessions on wholesaler items and we would ask you to please arrange in future to follow the procedure outlined in our price book. As you know, the only recognized distributing points are Vancouver and Victoria and for shipments to other points in British Columbia the corresponding freight should be added.

The fact that Northern and C.G.E. have warehouses at some of these points should have no bearing on the matter since Horsman would still be competitive with them as jobbers and so retain his full 15% protection. To the best of our knowledge, all other manufacturers charge the freight from the two distributing points mentioned above to other destinations in B.C. and there is no reason why we should do anything different.

As you know, it has always been our policy to adhere strictly to established prices and pricing procedure. We depend on you, of course, to report any instances where more favourable prices are being offered by the manufacturers and we will then advise you what action to take. In no case should you deviate from the established prices without first giving us complete details and obtaining an O.K. from this office to do so. We believe you are fully familiar with the arrangement we have and our reasons for insisting on this will be obvious to you."

(Ex. 388, CWC 2-1, 2467)

The possibility of variation in the final price arising from failure to cover every contingency when agreements were made on freight charges is illustrated by correspondence which arose over quotations made to the City of Winnipeg Hydro in 1951. The latter apparently questioned C. C. & F.'s practice of charging freight on the gross weight of shipments, including the weight of the reels. Winnipeg Hydro had received other quotations in which the freight was not charged on the weight of the reel but the customer was required to return the empty reels freight prepaid to the factory. On March 20, 1951, V. N. Longtin of C. C. & F. stated in a memorandum that:

". . . This gives them the advantage of the difference in rates between that charged for material and empty reels' rate. As we feel this is contrary to our price set-up, we would appreciate having comments and if we are in error would appreciate if this could be clarified."

(Ex. 71, 2BIW1-3, 9166)

Federal replied on March 27:

"When quoting or billing the above Hydro, it is our policy to charge freight according to the shipping weights as listed in the price set-up. These weights do not always work out to be the exact gross weight but are usually within reason.

It is our opinion that we should continue the practice of using the shipping weights when billing. . . ."

(Ex. 172, 2BIW 1-1, 9164)

This memorandum indicated that the actual weights of wire and cable products have not always been used by the manufacturers in computing freight charges. This is further illustrated by price studies on varnish cambric cables, circulated to the other manufacturers by C.G.E. on January 24 and February 18, 1952. On this occasion shipping weights to be incorporated in the price books and price lists of the manufacturers were the subject of discussion and agreement by the manufacturers. The following is an extract from these price studies:

"(3) Shipping Weights.

Our study of comparative shipping weights indicate that:

(1) Canadian V.C. and Braided weights are somewhat heavier than American in the smaller conductor sizes.

It is proposed to reduce our shipping weights to agree more nearly with the American values.

(2) Canadian VCLC weights are comparable. No change in our shipping weights is proposed."

(Ex.140, 3PEW5-18 to 5-18-6, 8876-81 and 3 PEW 8-8 to 8-8-7, 8971-7)

Exhibit 120 indicates that freight charges were still the subject of agreement among the manufacturers as late as 1952. This memorandum was obtained from the files of Northern and reads as follows:

"MAP FREIGHT RATES

February 18, 1952.

Tonnage Material Sheets show:-

F.O.B. Montreal, Toronto, Hamilton, St. John, Brockville, Peterboro, Guelph.

Some Footage show:-

F.O.B. Montreal, Toronto and Hamilton
Others show:-
F.O.B. Montreal, Toronto, Hamilton, Brockville,
Others show:-
F.O.B. Montreal, Toronto, Hamilton, Brockville, Peterboro,
Others show:-
Montreal and Toronto.

Suggest leaving Map Rates as is but to change all Footage sheets at first opportunity:-

F.O.B. Montreal, Toronto, Hamilton, Brockville, Peterboro, St. Johns, Guelph, to be the same as Tonnage.

Zone Footage prices - No change."

(Ex. 120, 3NE 3-1, 4313)

D. C. Borden of Northern was examined with respect to Exhibit 120:

"Q. . . . Would you state whether you have ever seen that document before, or could you explain the purport of it?

A. I think I saw this. I think I saw a copy of it because my impression is that this was a subject that Mr. Clish wanted me to discuss at a meeting. He suggested that we discuss the possibility of bringing them more in line with the newer freight rates to-day. It threw our plan out of balance so that the western were paying a penalty as comparing to the east. He suggested that these points be discussed with the idea of getting a more equitable freight rate balance. That was the first item that was referred to on the agenda. As far as I know we never got around to discuss it.

Q. My understanding is correct that the map freight rates for all the manufacturers are the same, that is, you use the same figures?

A. Yes, I think that is correct. These map rates only apply to certain products.

Q. They do not apply even to your zones; you have your zone list price?

A. Yes.

Q. Then you have some other products and it is F.O.B. and you have map freight rates?

A. Where map rates apply zone rates do not. That is the size of it.

Q. Is it not also correct that the effect of the map freight rates means that regardless of where the shipment originates the delivered price to the consumer will be the same for any of the manufacturers?

A. I think that is correct.

Q. And the only way you can have that coming out the same for all the manufacturers is by having an agreement between them to use the same map freight rates; is that correct?

A. I can't see any other way."

(Evidence, pp. 469-70)

Mr. Borden's reference to an agenda in this passage was to Exhibit 119, entitled "Items to [sic] added to Next Meeting's Agenda", one of which was "Map Rates on Price Card" (Ex. 119, 3NE 2-2, 4312).

A memorandum sent out by Northern (Evidence, p. 549) on March 28, 1952, is further evidence that shipping weights of wire and cable products, used in computing the freight charges on shipments to customers at other than prepaid points, were the subject of discussion and agreement among the manufacturers. The memorandum, attached to which were proposed shipping weights on cab tire cable, power supply and portable cable, was as follows:

"We are forwarding herewith the attached list of revised shipping weights for your consideration.

If all are in agreement we plan to publish these weights and at the same time revise the prices for these cables based on new Zone freight adders which we have set up to incorporate the recent increases in Freight rates.

If we do not hear anything to the contrary we plan to release revised price sheets as soon after April 7th as possible."

(Ex. 124, 3NE5-3-1 to 5-3-2, 4366-7; Ex.345, 3NE24-1-1 to 24-1-3, 4722-4)

Examined with respect to Exhibit 124, Mr. Borden stated:

"A. Again it is a case of attempting uniformity in technical information. These things are all built to C.S.A. specifications and within a very small percentage they weigh the same regardless of who makes them. It does not always show the actual weight and way of establishing what these weights are on which freight rates are paid. The human error comes up again when it is done by different people. In this same effort to have a similar starting point for price negotiations it is very desirable to have the same weights used by everybody so this is a proposal that these weights be accepted."

(Evidence, p. 481)

S. H. R. Clish of Northern was also shown Exhibit 124. He stated that Northern prepared and sent out all map freight rates and that zone areas were the same for all manufacturers. He also testified as follows:

"Q. Do you ever get any map freight rate information from other manufacturers?

A. No.

Q. Have you ever?

A. Yes, I have had something from the other manufacturers drawing something to my attention that is not correct in some part of the country where they think something should be done about it. I might mention here that as to map freight rates the set-up is to take a map and block off a section and while doing so take 20 points in that section and study it very carefully as to its effect on your customers' purchases, and each and every time when we decide on a freight rate that is to be used as a map freight rate we take the lowest possible map freight rate in that case. As we move West and East we use more generally actual freight rates because you generally may be familiar with the fact that there is a lot of manufacturing in the Eastern part of Canada and as it moves West there are freight rates that involve carloads and different things and means of shipping your material to the Coast. We must take recognition of these very low freight rates that have been given to this part of the country. We are in a position to know that we at no time set up map freight rates that are detrimental to the customer.

Q. You say you always take the lowest figure?

A. Yes, any map rate if there are 20 points we study them and take the lowest one.

Q. Has it ever happened that you have not taken the lowest one?

A. The general principle is to take the lowest."

(Evidence, pp. 551-2)

F. W. Barnhouse of C.G.E. was examined with respect to Exhibit 345, which is identical to Exhibit 124 with the exception of the third sheet. He stated that the first two sheets originated with Northern. As far as he knew, Northern prepared and distributed information on freight rates to the other manufacturers, but Exhibit 345 was concerned with shipping weights rather than freight rates. Mr. Barnhouse was further questioned as follows:

"Q. Perhaps you could explain it. I have probably misunderstood the document. I thought it had to do with freight rates. What would occasion the new or the proposed shipping weights?

A. I assume they made a study of shipping weights of these types of cables and brought them in line with whatever shipping weights are at present. They may have been up or down, I don't know which. They may have been incorrect at one time.

Q. Well, did Northern Electric provide this service then as well as some of the other matters to which you have referred, that is, the checking of the shipping weights, is that a service that they performed for the other manufacturers?

A. In this instance it appears they did.

Q. Well, did they regularly perform it?

A. I don't think so.

Q. Did your Company ever prepare shipping weight figures?

A. We would normally put them on any price sheets we distribute.

Q. And when you put them on the price sheets you distributed, did you prepare the weights or did you take the weights from the information that you had received from other manufacturers?

A. No, I believe we prepared the weights.

Q. For all products or just for those products that you referred to yesterday as being the wire and cable products for which you were responsible for preparing price information for the other manufacturers?

A. Normally we would have to prepare the shipping weights for items for which we send out price sheets.

Q. Now, are the items referred to in this exhibit - that is, are the wire and cable products referred to in this exhibit, products for which Northern Electric prepared prices?

A. That is correct, sir."

(Evidence, pp. 1623-4)

In addition to the evidence cited above other pertinent oral evidence relating to the agreements and arrangements with respect to freight charges and changes in freight charges designed for the purpose of achieving uniformity in such charges and for reflecting such charges in uniform prices, is as follows:

| | | |
|---|---|---|
| T. A. Gass - Canada Wire | Evidence, | pp. 1651-3 |
| K.P. Macpherson - Northern | " | pp. 31-3; 35-6 |
| G. W. Arnold - Boston | " | pp. 1225-7 |
| W.R. Greenshields - Triangle | " | pp. 1376-8 |
| A.A. Wagman - Industrial | " | pp. 1998-9 |
| J. H. Pryce - Canada Wire | " | pp. 1804-5 |
| J. H. Fitzgerald - Phillips | " | pp. 608-9 |
| V. N. Longtin - C.C. & F. | " | pp. 889-90 |

8. Agreements on Other Subjects

In addition to the agreements and arrangements referred to in some detail in other sections of these allegations, there have also been agreements and arrangements with respect to certain other aspects of prices having or designed to have the effect of achieving uniformity in prices and thus preventing or lessening competition. Three of such agreements and arrangements relate to firm prices or prices prevailing at date of shipment, foreign competition, and charges for reels and spools. These three subjects are dealt with in this section of the allegations.

(a) Firm Prices vs Prices Prevailing at Date of Shipment

Because of the time lag which might exist between the date of tendering or ordering wire and cable products and the date of delivery, it has been important from the point of view of the manufacturers whether the prices to be charged for a product were to be the prices existing at the time the order was placed or the tender quotation was made or the prices existing at the time of delivery. In order to ensure uniformity in prices between manufacturers, therefore, it was necessary that there be agreements and arrangements with respect to whether prices were to be firm prices, i.e. prices at the time of ordering or quoting, or prices at date of shipment. The question of the policy to be adopted was discussed from time to time and agreements made by the manufacturers providing for a common course of action, either selling on a firm price basis or on the basis of prices in effect at time of delivery.

This subject was brought up by T. A. Gass of Canada Wire in his memorandum of February 25, 1949 to other manufacturers. He reviewed what he thought should be discussed at the meeting of March 2 (Evidence, p. 140-1) and Item (c) referred to "the matter of firm prices vs prices prevailing at the date of shipment". Concerning this he wrote:

> "In connection with letter C above, there seems to be a growing demand from the trade that firm prices should be re-instituted on certain commodities - some now purchased on a firm basis although others are still sold and can only be purchased on the basis of prices prevailing at date of shipment. The writer suggests that each one roughly check some of these items so that we can consider the pros and cons of this policy, not possibly for immediate action but for action in the not too distant future."
>
> (Ex. 62, 2BIW12-3, 9221)

K.P.Macpherson thought that the memorandum originated with T. A. Gass and said that the question of firm prices had been discussed by the manufacturers at meetings (Evidence, pp. 162-3).

J. H. Fitzgerald of Phillips said that the question of firm prices had been discussed by the manufacturers at meetings and that at the present time there was a uniform policy in respect to firm prices. When Mr. Fitzgerald was asked if "one of the objects of the manufacturers is to obtain uniformity in this matter of firm prices vs prices prevailing at date of shipment", he replied in the

affirmative (Evidence, pp. 646-7).

The question of firm prices arose again when Mr. Gass circulated the following suggestion to the other manufacturers on August 23, 1949:

> "Referring to F's memo of the 22nd and various conversations in connection with Lead Covered Power Cable, we have discussed this matter with our executive and believe that Power Cable can definitely be sold on a firm price basis effective same date as the other copper wire products and that the Telephone Cable is a matter only for two Companies to consider and should not have any bearing on the Power Cable situation.
>
> We can buy lead firm for delivery within three months and our suggestion, which we submit for your consideration, is that all normal inquiries for Lead Covered Power Cable should be quoted firm prices if for delivery within four months from date of order, and another yard stick of having a value not in excess of $50,000.00.
>
> We see no reason why we could not immediately adopt a policy covering Power Cable sales, as outlined above, but agree that on large inquiries for future delivery - possibly even as has happened in the past, for delivery over a period of a year - that those individual inquiries should be considered on their own merits and discussed and settled at the time of tendering, but that to avoid confusion and frequent discussions, the simplest method would be to follow the policy outlined in our suggestion above.
>
> We would request that you give this matter very careful consideration and let us have your comments at your earliest convenience."
>
> (Ex. 65, CWC40-1, 2689)

Further discussions were held with respect to this question of firm prices and as a result all manufacturers adopted a similar selling policy with respect to firm prices (Evidence, pp. 175, 650, 897, 991-2, 1710-11).

The policy of firm prices with the exception of ACSR, copperweld aluminum and power cables, as indicated in Exhibit 64, was put into effect by C. C. & F., Canada Wire and Automatic effective September 15, 1949. Letters to this effect were sent out on September 1 by C. C.& F. and Canada Wire, and on September 9 by Automatic (Ex. 265, WNE4-5, 4-6, 3104-5; Ex. 372, CWC36-3, 2678-80; Ex. 167, AEL6-1, 283; Ex.200, AEL6-2, 284; Evidence, p.650). A follow-up letter was sent out by J. H. Pryce of Canada Wire on September 15, 1949 so that their practice would correspond to that of the other manufacturers (Ex. 373, CCW9-1, 3399-3400). V. N. Longtin of C. C. & F. said that the policy adopted with respect to firm prices by his company was the result of the discussion which took place with reference to Mr. Gass' memorandum of August 23, 1949. (Evidence, p. 898).

The evidence indicates that the subject of firm prices and prices prevailing at date of shipment was under discussion on various occasions. The evidence also indicates that the subject

had been discussed at meetings of manufacturers over a period of time and that there had been uniformity among manufacturers with respect to the practice being followed in the industry at any one time (Evidence, pp. 735-6, 1775-8; Ex.372).

(b) Foreign Competition

There were numerous references in the evidence and the documents to foreign competition which the wire and cable manufacturers encountered from United Kingdom and the United States imports. United Kingdom competition was largely on power cable where the orders were of considerable value. It does not appear to have been a serious factor in footage and tonnage material since Canadian and British standards have differed and the Canadian market did not take sufficient quantities to warrant U.K. manufacturers producing especially for this market (Evidence, pp. 1378-81, 1880-1, 1976-7). U.S. competition, on the other hand, has been essentially on footage material and the Canadian industry has been very sensitive to American prices (Evidence, p.824). The manufacturers have studied U.S. domestic prices when preparing and revising their own prices and in many cases have set prices equivalent to, or slightly lower than, the American price plus duty and transportation costs (Evidence, pp. 824, 956, 1207-8, 1498, 1976). When U.S. prices moved up or down, the effect in Canada was considered at meetings of manufacturers, and at such meetings it was decided whether American prices would be met (Evidence, pp. 1378-81, 1222, 2000-1). There have been occasions when U.S. competition was very effective (Evidence, pp. 1766, 67 and 69). When wire and cable was in short supply in the United States, however, Canadian prices have at times been higher than the laid-down prices of U.S. imported materials. During the depression the Canadian industry appealed to Ottawa for an artifical fair-market valuation on U.S. imports on the grounds that Canadian manufacturers needed such protection to stay in business (Evidence, p. 1498). Much of the documentary evidence respecting U.S. competition was discussed in Section III, 1, and is not repeated here.

In 1938 a private agreement between Canadian and U.K. manufacturers of wire and cable, known as the Anglo-Canadian agreement, went into effect. It was to continue for three years and provided for Canadian companies to act as agents for the U.K. wire and cable companies in Canada and vice versa (Evidence, pp. 271-9; Ex.104). The agreement was suspended during the war and presumably the unexpired portion was to be continued after the war. Mr. Macpherson did not recall that it was ever revived. Efforts were made to negotiate a new agreement in March of 1948 but when U.K. and Canadian representatives met later, agreement was not reached and the matter lapsed. This, together with the U.K. export program, may explain in part the entry of U.K. manufacturers into the Canadian market at that time.

In May 1950 measures to combat U.K. competition in Canada were being seriously considered by the manufacturers (Ex. 106; Evidence, pp. 280-3). The U.K. manufacturers were quoting what the Canadian manufacturers referred to as "penetrating" prices in Canada, and this was considered an unfriendly action. K. P. Macpherson of Northern described a "penetrating" price as one below the cost of Canadian manufacturers and below the selling price of the material in the U.K. home market (Evidence, p. 282).

Various representatives of the wire and cable manufacturers said that British competition was discussed at their meetings (Evidence, pp. 39, 566-7, 872-3, 1619, 1664-5, 1767-8 and 1806). Mr. Macdonald of Northern said that British competition was discussed in general terms at meetings and, on occasion, specific tenders were discussed and all manufacturers agreed to lower their bids to meet this competition (Evidence, pp. 566-7). V.N. Longtin of C. C. & F. recalled that there had been telephone discussions with a view to all manufacturers lowering their prices to meet U.K. competition (Evidence, pp. 872-3).

Mr. Borden stated that the competition which kept the Canadian market in line was the outside competition and specifically referred to U.K.inroads into the Canadian market (Evidence, p.443).

When Mr. Lumbers of Canada Wire was asked if British competition was effective in Canada today, he replied:

> "Not steadily. The British have dumped very seriously in the past two years by waiting until one big job comes along and then quoting prices considerably lower than they sell them for in their own country and then keeping quiet for some months and doing the same thing over. There is no steady British competition. There are enough big orders in Canada that we have lost not to take lightly the fact that somebody will wait until a large one comes up and then quote a price that cannot be justified by any of our costs that our company are able to work out.
>
> Q. Does the British laid-down cost constitute an effective competition where it is not obviously a case of dumping?
>
> A. Nobody can stop them. These are the big jobs that are risk jobs that we have trouble with.
>
> Q. Would it be a case of dumping?
>
> A. Two cases we know of are definitely dumping."
>
> (Evidence, pp. 1766-7)

It was the general consensus of opinion, however, that neither U.K. nor U.S. competition was a serious factor at the time of the hearings (Evidence, pp. 1526-7). In fact, the shortage of copper in the United States made it possible at this time for Canadian prices to be set without regard to the American laid-down price in Canada (Evidence, pp.1439-40, 1766-7, and 1769).

### (c) Reels and Spools

The evidence indicates that uniform charges for the reels and spools used in shipping wire and cable to customers were adopted by agreement. Some manufacturers sold the reels to the customer and later repurchased them, while others charged a deposit on the reels and returned the deposit when the reels were returned to the company. It is alleged that the policies followed by the manufacturers differed in terminology only, the charges for the reels having been uniform.

On December 28, 1948, T. A. Gass of Canada Wire sent out the following memorandum:

"For your information we attach hereto schedule of Reel prices that we will adopt effective January 3, 1948, which we believe to be in line with suggestions I have already made and also in line with the current prices for 1948 of other Companies.

We have run into several snags that possibly other Companies have also come up against, as for instance, Enamel Magnet Wire that is now packed in cases ready for shipment, as well as stocks in our Branch Offices, and as it would be a pretty costly proposition to unpack these spools and identify them, we have decided material already packed for shipment on reels and spools that may be shipped out after the first of the year, will be charged for the reels at the old prices which are already stamped on the reels and packages. We see no other method of handling this stock material, but can assure you that all material manufactured after January 3rd and spooled, the reels will be identified and charged at the new prices.

The reason we mention this is that you may even for a few months find some of our material shipped out on spools that are charged at the old price, but we are quite sure you will appreciate the reason for same, as outlined above."

(Ex. 316, AEL6-20, 249)

An exchange of correspondence in 1951 is further indication that there was an agreement or arrangement among the manufacturers with respect to reel charges. A circulating memorandum from the files of Northern, dated July 16, 1951, was as follows:

"We are currently using prices in billing out reels and spools which became effective January 3, 1949. Since then costs have increased considerably and we find in a number of cases we are supplying these reels and spools at prices below our actual cost.

We were wondering if the other manufacturers are experiencing the same thing and if they have any suggestions as to probable basis of increasing the current listings. Please advise."

(Ex. 127, 3NE8-12-2, 4430)

Another memorandum dated July 17, 1951 indicates that reel charges were discussed at a meeting at the Caledon Trout Club as well as by memorandum:

"Reference - L's memo July 16th.

This subject was mentioned briefly recently at Caledon and was investigated by us after our return.

As far as we are concerned, the prices charged for reels are still satisfactory.

We will, however, be very shortly putting forward a proposition with regard to change of terms on reels. This is

necessitated by certain rulings made by the Income Tax Branch of the Canadian Government and we will be writing or talking to you further about this immediately after vacation shut down."

(Ex. 127, 3NE8-12-4, 4432)

Both of the above documents were obtained from the files of Northern and were presented in evidence through D. C. Borden, who said they originated outside his company. He thought the first was from Canada Wire and the second from Phillips.

(Evidence, p. 504)

On July 30, 1951, V. N. Longtin of C. C. & F. sent out the following memorandum:

"In reply to the memo of July 20th, we have checked our records on cost of reels against the selling price, and would suggest an increase in price on the 30' size. At the present time, our selling price on this reel is $14.00, and our suggestion would be that it would be increased to read $16.00."

(Ex. 127, 3NE8-12-5, 4433)

In a memorandum dated August 23, 1951, from D. C. Borden of Northern to S. B. Wickes and W. H. Eastlake of the same company, Mr. Borden made the following statement with reference to the change by some companies in the method of billing out reels.

"At least two Cable Manufacturers have on the advice of their Income Tax Counsels changed their method of billing out reels so that money charged for a reel is a 'Deposit' rather than a straight billing. These people seem quite convinced that we are leaving ourselves open to the assessment of extra Income Tax so long as we continue to bill out reels for later credit."

(Ex. 127, 3NE8-11-3 to 8-11-4, 4425-6)

An unsigned memorandum sent out by Phillips (Evidence, p. 504) on November 30, 1951, indicates that they were one of the two manufacturers referred to above who had adopted the new method of billing out reels (Ex.127, 3NE8-2-1 to 8-2-2, 4406-7).

When examined with respect to Exhibit 127, D. C. Borden of Northern indicated that the charges for reels were the same as between manufacturers, but that the charges for the reels did not affect the cost of the cable to the customer:

"Q. The point that I would like to be informed on, Mr. Borden, is whether there was a uniform policy or whether there is a difference between the manufacturers in method in the way charges are made for reels?

A. There is not a uniform policy. There was but Phillips Company's lawyers advised them to change it. I know what Phillips' is and I know what ours is.

Q. The fact that the policy is not uniform does not influence the price to the customer?

A. I think the prices are all the same. They are refunded, anyway.

Q. So if there is any difference in the charges of reels it does not affect the cost to the customer?

A. No, he can get the money back.

THE COMMISSIONER: Q. The reels are not sold?

A. Under the old scheme, and bought back and the Phillips Company are now loaning them and charging a deposit. We are still selling them and buying them back."

(Evidence, pp. 505-6)

(Sgd.) "G.R. Hunter"

G. R. Hunter
Commission Counsel

December 19, 1952